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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am

WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–36 of July 19, 1994

Food Security Wheat Reserve Release

Memorandum for the Secretary of Agriculture

By virtue of the authority vested in me as President by the Food Security Wheat Reserve Act of 1980 (the "Act") (7 U.S.C. 1736f–1), I hereby authorize the release in fiscal year 1994 of up to 200,000 metric tons of wheat from the reserve established under the Act (the "reserve") for use under Title II of the Agricultural Trade Development and Assistance Act of 1954 to meet relief needs that exist in the Caucasus region of the former Soviet Union, which I hereby determine are suffering severe food shortages. The wheat will be used to provide urgent humanitarian relief to the peoples in this region who are suffering widespread hunger and malnutrition.

This action is taken because wheat needed for relief in this region cannot be programmed for such purpose in a timely manner under the normal means of obtaining commodities for food assistance due to circumstances of unanticipated and exceptional need.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 19, 1994.

[FR Doc. 94–17929
Filed 7–19–94; 2:57 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–19–AD; Amendment 39–8975; AD 94–15–04]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. Model 214ST helicopters, that requires creation of a component history card and establishes an additional retirement life for the main rotor mast (mast). This amendment is prompted by fatigue analysis and retesting that showed that the mast is sensitive to frequent takeoffs and external load lifts (high-power events) in addition to time-in-service. The actions specified by this AD are intended to prevent fatigue failure of the mast, loss of the main rotor system, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: August 25, 1994.

ADDRESSES: This AD and any related information may be examined in the Rules Docket at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Lance Gant, Aerospace Engineer, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5141, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. Model 214ST helicopters was published in the **Federal Register** on November 12, 1993 (58 FR 59967). That action proposed to require creation of a component historical service record and proposed to establish an additional retirement life of 50,000 high-power events for the main rotor mast (mast), part number (P/N) 214–040–090–109. Currently, the mast has a retirement life of 10,000 hours' time-in-service.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with some editorial changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

In the notice, the cost estimates associated with this AD were based on replacement of the mast and creation of the component history card for the entire fleet. This rule contains cost estimates for one-sixth of the fleet each year instead of the entire fleet, as in the notice. Additionally, the notice referred to the component history card as a "historical service record or component history card". This rule refers to it as a "component history card or an equivalent record." Also, paragraph (d) of this rule was expanded to specify the details of the new retirement life. These changes will not increase the scope of the AD. However, the FAA has performed a more detailed cost analysis and has determined that, when factoring in the creation and maintenance of the component history card or equivalent record, the anticipated costs are $9,163 higher than the proposed amount for the first year, and $7,879 higher than the proposed amount for each subsequent year. In the proposal, the cost of this AD was estimated to be $53,970 each year ($323,820 for the total fleet).

The FAA estimates that 14 helicopters of U.S. registry will be affected by this AD, that (1) it will take approximately 24 work hours per helicopter to replace the affected part due to the new method of determining the retirement life required by this AD, (2) it will take approximately 2 work hours per helicopter to create the component history card or equivalent record (record), (3) it will take approximately 10 work hours per helicopter to maintain the record each year, and (4) the average labor rate is $55 per work hour. Required parts will cost approximately $21,810 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators for the first year is estimated to be $63,133, and each subsequent year to be $61,849. These costs assume replacement of the mast in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the records and maintenance of the records for all the fleet each subsequent year.

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, 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:

AD 94–15–04 Bell Helicopter Textron, Inc.: Amendment 39–8975. Docket Number 93–SW–19–AD.

Applicability: Model 214ST helicopters, with main rotor mast (mast), part number (P/N) 214–040–090–109 installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent fatigue failure of the mast, loss of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 calendar days after the effective date of this airworthiness directive (AD), accomplish the following:

(1) Create a component history card or an equivalent record for the affected mast.

(2) Determine and record the total time-in-service (TIS) accumulated for the mast as follows:

(i) If the TIS of the mast is unknown, use a TIS of 900 hours' per year. Prorate the hours for a partial year.

(ii) If the TIS is known, use that total TIS.

(3) Determine and record the accumulated takeoffs and external load lifts (high-power events) for the mast as follows:

(i) If the number of high-power events is unknown, assign 11 high-power events for each hour TIS obtained in accordance with paragraph (a)(2).

(ii) If the number of high-power events is known, record that number as total accumulated high-power events.

(b) After compliance with paragraph (a) of this AD, continue to record the TIS and high-power events and add the high-power events to the previously recorded sum.

(c) Remove the mast from further service in accordance with the following:

(1) For each mast with 9,900 hours' or more total TIS on the effective date of this AD, remove and replace the mast within the next 100 hours' TIS.

(2) For each mast with less than 9,900 hours' total TIS on the effective date of this AD, remove and replace the mast before it attains 10,000 hours' TIS.

(3) For each mast with 48,900 or more high-power events on the effective date of this AD, remove and replace the mast on or before the accumulation of an additional 1,100 high-power events.

(4) For each mast with less than 48,900 high-power events on the effective date of this AD, remove and replace the mast before it attains 50,000 high-power events.

(d) This AD revises the Airworthiness Limitations Section of the maintenance manual by establishing a new retirement life for the mast of 10,000 hours' TIS, or 50,000 high-power events, whichever occurs first. However, for masts with 9,900 hours' or more TIS or 48,900 or more high-power events on the effective date of this AD, those masts need not be retired until on or before the accumulation of an additional 100 hours' TIS or 1,100 high-power events, respectively.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft 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 helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective August 25, 1994.

Issued in Fort Worth, Texas, on July 13, 1994.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–17795 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–ASO–4]

Establishment of Class D Airspace; Class E4 Airspace and Amendment of Class E2 Airspace; Athens, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and Class E4 airspace at Athens/Ben Epps Airport, Athens, Georgia due to commissioning of a Non-Federal Air Traffic Control Tower, March 14, 1994. This action also amends the Class E2 surface airspace at Athens/Ben Epps Airport to indicate part-time when the control tower is not in operation. The intended effect of this action is to require pilots to establish two-way radio communications prior to entering the airspace during the hours the control tower is in operation.

EFFECTIVE DATES: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5591.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71 to establish Class D and Class E4 airspace at the Athens/Ben Epps airport Athens, Georgia. This proposal also would amend the Class E2 surface airspace at Athens/Ben Epps Airport to indicate part-time. The establishment of this Class D airspace area will require pilots, prior to entering the airspace, to establish two-way radio communications with the newly commissioned air traffic control tower providing air traffic services. (59 FR 22567). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice. Designations for Class D, Class E2, and Class E4 airspace respectively are published in Paragraphs 5000, 6002, and 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D and Class E4 airspace areas at Athens/Ben Epps Airport, Athens, Georgia. This amendment also amends Class E2 surface airspace at Athens/Ben Epps Airport, Athens, Georgia, to indicate part-time. The establishment of this Class D airspace area will require pilots, prior to entering the airspace, to establish two-way radio communications with the newly commissioned air traffic control tower providing air traffic service.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.7 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para 5000 Class D Airspace

* * * * *

ASO GA D Athens, Georgia [New]

Athens/Ben Epps Airport, Athens, Georgia
(Lat. 33°56'54" N., long. 83°19'36" W.)

That airspace extending upward from the surface to and including 3300 feet MSL within a 4-mile radius of the Athens/Ben Epps Airport. This Class D airspace area is effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ASO GA E4 Athens, Georgia [New]

Athens/Ben Epps Airport, Athens, Georgia
(Lat. 33°56'54" N., long. 83°19'36" W.)
Athens VORTAC
(Lat. 33°56'51" N., long. 83°19'29" W.)

That airspace extending upward from the surface within 3 miles each side of the Athens VORTAC 195° radial, extending from the 4-mile radius of Athens/Ben Epps Airport to 7 miles south of the VORTAC and within 3 miles each side of the Athens VORTAC 076° radial, extending from the 4-mile radius of Athens/Ben Epps Airport to 7 miles east of the VORTAC.

* * * * *

Para 6002 Class E airspace areas as a surface area for an airport.

* * * * *

ASO GA E2 Athens, Georgia [Amend]

Athens/Ben Epps Airport, Athens, Georgia
(Lat. 33°56'54" N., long. 83°19'36" W.)

That airspace, extending upward from the surface within a 4-mile radius of the Athens/Ben Epps Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 9, 1994.

Michael J. **Powderly,**

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–17796 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 100

Administrative Regulations

AGENCY: National Labor Relations Board (NLRB).

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is amending the current administrative regulations governing the standards of conduct and financial disclosure requirements of employees of the Agency. Most of these regulations have been superseded by the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government Ethics (OGE). The NLRB publishes this rule to repeal the superseded provisions and to update cross-references in the current regulations that continue to be applicable, in conformance with the executive branch-wide standards.

Thus, NLRB is not repealing the provisions of the existing administrative regulations requiring approval to engage in outside employment, the prohibition to engage in private practice of law except in family or civic matters, and the requirement to cooperate with the NLRB's Office of Inspector General in audits and investigations.

EFFECTIVE DATE: The removal of §§ 100.202 through 100.209 and § 100.306 became effective October 5, 1992. The redesignation and revision of § 100.201 is effective July 21, 1994. All other amendments became effective February 3, 1993.

FOR FURTHER INFORMATION CONTACT:

Gloria Joseph, Director of Administration, National Labor Relations Board, Room 7108, 1099 Fourteenth Street NW., Washington, DC 20570–0001. (202–273–3890).

SUPPLEMENTARY INFORMATION: In 1967, the NLRB issued 29 CFR Part 100, administrative regulations governing employee responsibilities and conduct (32 FR 13560), primarily pursuant to and in conformance with E.O. 11222 (May 8, 1965) and regulations issued by the U.S. Civil Service Commission (5 CFR 735.104, 33 FR 12487). Executive Order 12674 (April 12, 1990)—as modified by E.O. 12731 (October 17, 1990)—revoked E.O. 11222 and directed OGE to "establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable."

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006). These uniform standards of conduct, codified at 5 CFR part 2635, became effective on February 3, 1993; and supersede most of the provisions in the NLRB's regulations found in 29 CFR Part 100. Additionally, the new standard authorized executive-branch agencies, with the concurrence of OGE, to issue supplemental agency-specific regulations that are necessary and appropriate to implement their respective ethics programs (5 CFR 2635.105).

Therefore, NLRB is amending Part 100 by removing/repealing certain sections of subparts A, B, and C that have been superseded by the new OGE regulations and by revising or redesignating the remaining provisions.

In subpart A, "Employee Responsibilities and Conduct," § 100.101 has been amended to cross-reference the new executive branch-wide standards. Section 100.102 has been revised to accommodate redesignated § 100.113. Sections 100.103 through 100.105, §§ 100.111 through 100.112, paragraphs (a)(2) through (d) of § 100.113, §§ 100.114 through 100.122 have been removed. Section 100.123 is redesignated as § 100.201 of the renamed subpart B, "Cooperation in Audits and Investigations." Sections 100.301 through 100.305 and § 100.307 of subpart C, "Special Government Employee Conduct and Responsibility," were also superseded as of February 3, 1993, and have been removed.

Section 100.106, with a revised paragraph (a) to show the new street address "1099 Fourteenth Street, NW"

of the NLRB headquarters, is redesignated as § 100.401 of the renamed subpart D.

Paragraphs (a)(1) and (e) of § 100.113 have been redesignated as paragraphs (a) and (b) of § 100.102. NLRB is not removing these paragraphs, because they contain the Agency's requirements for approval to engage in outside employment and activities, and the prohibition to engage in private practice of law except in family or civic matters. Pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch, these requirements will remain in effect until February 4, 1995, or until NLRB publishes new requirements.

Effective October 5, 1992, OGE regulations contained in 5 CFR part 2634, "Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," superseded the executive branch confidential reporting regulations at 5 CFR part 735, subpart D and § 735.106, as well as the NLRB's implementing regulations. Therefore, the NLRB is further amending part 100 by removing §§ 100.201 through 100.209, along with the heading of subpart B," Employee Statements of Employment and Financial Interest." Section 100.306 and the heading of subpart C, "Special Government Employee Conduct and Responsibilities," and also removed.

Sections 100.120 (gambling, betting, and lotteries) and 100.121 (general conduct prejudicial to the Government) of the NLRB regulations are not superseded by 5 CFR part 2635 nor any other OGE regulation. However, pursuant to E.O. 12674 (as modified by E.O. 12731), OPM issued a final rule on November 30, 1992 (57 FR 56433) to complement 5 CFR part 2635. Enforceable by the employing agency, this OPM rule—which revised part 735 of title 5, Ch. I of the Code of Federal Regulations—became effective on February 3, 1993; and established executive branch-wide standards in these conduct areas. Accordingly, the NLRB is removing §§ 100.120 and 100.121.

Additionally, subpart D, "Employee Personal Loss Claims [Reserved]," is redesignated as subpart C; subpart E, "Claims Under the Federal Tort Claims Act," is redesigned as subpart D; and subpart F, "Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by the National Labor Relations Board," is redesignated as subpart E of part 100 of title 29, Ch. I of the Code of Federal Regulations. Section 100.570 is amended to show the new street address "1099 Fourteenth Street, NW" of the NLRB headquarters and the Director of Administration.

This rule relates to Agency management and personnel. As such, no notice of proposed rulemaking has been published. For the same reason, the rule is not subject to the review requirements of E.O. 12991.

List of Subjects in 29 CFR Part 100

Administrative regulations, employee responsibilities and conduct, Government employees, cooperation in audits and investigations, employee personal property loss claims, claims under the Federal Tort Claims Act, nondiscrimination on the basis of handicap in NLRB programs.

For the reasons stated in the preamble, part 100 of title 29, Ch. 1 of the Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 is revised to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 141, 146).

Subpart A is also issued under 5 U.S.C. 7301; 5 U.S.C. app. (Ethics in Government Act of 1978); E.O. 12674, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.802(a), 2635.803; 18 U.S.C. 201 et seq.; 18 U.S.C. 208; 57 FR 56433 (codified at 5 CFR 735); the Inspector General Act of 1978, as amended by the Inspector General Act Amendment of 1988, 5 U.S.C. app. 3.

Subpart B is also issued under the Inspector General Act of 1978, as amended by the Inspector General Act Amendment of 1988, 5 U.S.C. app. 3; 18 U.S.C. 201 et seq.; 5 CFR 735; 42 U.S.C. 2000e–16(a); 29 CFR 1613.204(a) and 29 CFR 1613.216.

Subpart D is also issued under 28 U.S.C. 2672; 28 CFR Part 14.

Subpart E is also issued under 29 U.S.C. 794.

Subpart A—[Amended]

2. Section 100.101 is revised to read as follows:

§ 100.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

(a) Employees of the NLRB should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, 5 CFR part 735 which addresses employee responsibilities and conduct executive branch-wide in relation to certain provisions not contained in the Standards of Ethical Conduct, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

3. Section 100.102 is revised to read as follows:

§ 100.102 Outside employment or occupation.

(a) The private practice of law either individually or with another person, is prohibited; however, as an exception, permission of the Board or General Counsel may be requested to engage in such occasional and private legal activities as those involving family or civic matters;

(b) *Requests for authorization and reports of outside employment.* (1) *Legal practice.* Requests directed to the Board or General Counsel, as appropriate, for exception to the prohibition in paragraph (a) of this section, shall at a minimum, include:

(i) Nature of legal activity,

(ii) Relationship of proposed client(s) to employee, if any,

(iii) Expected duration of activity, and

(iv) Compensation involved.

(2) *Other employment.* Before any employee accepts outside employment, he shall obtain permission of his Regional Director, Branch Chief, or the equivalent. Permission shall be granted in accordance with the regulations in this part. Each Regional Director, Branch Chief, or the equivalent shall maintain a record on an individual basis of each request received for outside employment authorization and the official action taken. At least annually, as of June 30, the Division Chief shall require a report from each subordinate authorizing official showing as a minimum:

(i) By named employee, the request and official action taken, and

(ii) A list by employee of the outstanding authorizations for outside employment.

§§ 100.103 through 100.105 [Removed]

4. and 5. Sections 100.103 through 100.105 are removed.

§§ 100.111 through 100.112 [Removed]

6. Sections 100.111 through 100.112 are removed.

§ 100.113 [Redesignated as § 100.102]

7. Section 100.113 is removed.

§§ 100.114 through 100.122 [Removed]

8. Sections 100.114 through 100.122 are removed.

Subpart B—Cooperation in Audits and Investigations

9. The heading for subpart B, "Employee Statements of Employment and Financial Interest," is revised to read as shown above.

§ 100.123 [Redesignated and revised]

10. Section 100.123 is redesignated as § 100.201 of subpart B and revised to read as follows:

§ 100.201 Audits and investigations.

(a) Employees shall cooperate fully with any audit or investigation conducted by the Office of the Inspector General involving matters that fall within the jurisdiction and authority of the Inspector General, as defined in the Inspector General Act of 1978, as amended, or with any audit or investigation conducted by any Agency official or department, including, but not limited to, the Office of Equal Employment Opportunity, involving matters that relate to or have an effect on the official business of the Agency. Such cooperation shall include, among other things, responding to requests for information, providing statements under oath relating to such audits or investigations, and affording access to Agency records and/or any other Agency materials in an employee's possession.

(b) The obstruction of an audit or investigation, concealment of information, intentional furnishing of false or misleading information, refusal to provide information and/or answer questions, or refusal to provide a statement under oath, by an employee to an auditor or investigator pursuant to any audit or investigation as described in paragraph (a) of this section, may result in disciplinary action against an employee. However, nothing herein shall be construed to deny, abridge, or otherwise restrict the rights, privileges, or other entitlements or protections afforded to Agency employees.

§§ 100.202 through 100.209 [Removed]

11. Sections 100.202 through 100.209 are removed.

Subpart C—Employee Personal Property Loss Claims [Reserved]

12. The heading for subpart C, "Special Government Employee Conduct and Responsibility," is revised to read as shown above.

§§ 100.301 through 100.307 [Removed]

13. Sections 100.301 through 100.307 are removed.

Subpart E—[Redesignated as Subpart D]

14. Subpart E, "Claims Under the Federal Tort Claims Act [Reserved]," is redesignated as subpart D, and revised to read as follows:

Subpart D—Claims Under the Federal Tort Claims Act

§ 100.401 Claims under the Federal Tort Claims Act for loss of or damage to property or for personal injury or death.

(a) *Filing of claims.* Pursuant to 28 U.S.C. 2672, any claim under the Federal Tort Claims Act for money damages for loss of or injury to property, or for personal injury or death, caused by the negligent or wrongful act or omission of any employee of the National Labor Relations Board while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such loss, injury or death in accordance with the law of the place where the act or omission occurred, may be presented to the Director of Administration, 1099 Fourteenth Street, NW., Washington, DC 20570, or to any regional office of the National Labor Relations Board, at any time within 2 years after such claim has accrued. Such a claim may be presented by a person specified in 28 CFR 14.3, in the manner set out in 28 CFR 14.2 and 14.3, and shall be accompanied by as much of the appropriate information specified in 28 CFR 14.4 as may reasonably be obtained.

(b) *Action on claims.* The Director, Division of Administration, shall have the power to consider, ascertain, adjust, determine, compromise, and settle any claim referred to in, and presented in accordance with paragraph (a) of this section. The Chief, Security Staff, can process and adjust claims under $100 in accordance with delegated authority from the Director. Legal review is required by the General Counsel or designee for all claims in the amount of $5,000 or more, 28 CFR 14.5. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR Part 14.

(c) *Payment of awards.* Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to this action will be paid by the Director of Administration out of appropriations available to the National Labor Relations Board. Payment of any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section will be obtained in accordance with 28 CFR 14.10.

Subpart F—[Redesignated as Subpart E]

15. Subpart F, entitled "Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Labor Relations Board," is redesignated as subpart E.

§§ 100.601 through 100.671–100.699 [Reserved]—[Redesignated as §§ 100.501 through 100.571–100.599 [Reserved]]

16. Sections 100.601 through 100.699 are redesignated as §§ 100.501 through 100.599, respectively.

§ 100.570 [Amended]

17. Newly designated § 100.570 is amended by revising the phrase "171 Pennsylvania Avenue NW.," in paragraph (c) to read "1099 Fourteenth Street NW.,".

Dated: Washington, DC, July 15, 1994.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 94–17758 Filed 7–20–94; 8:45 am]

BILLING CODE 7545–01–M

POSTAL SERVICE

39 CFR Parts 262 and 266

Conforming Postal Regulations to the Computer Matching and Privacy Protection Act of 1988

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its Privacy Act regulations to incorporate changes made by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503). That Act amended the Privacy Act of 1974 to establish procedures affecting agencies' use of Privacy Act records in performing certain types of computerized matching programs. The rules follow the guidelines issued by the Office of Management and Budget (54 FR 25818, June 19, 1989). Because the proposed rule (59 FR 30739, June 15, 1994) generated no comments, the final rule is published unchanged.

EFFECTIVE DATE: August 15, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, at the Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., room 8831, Washington, DC 20260–5240.

FOR FURTHER INFORMATION CONTACT: Sheila Allen, (202) 268–4869.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 requires an agency to meet certain procedural requirements when using one or more of

its Privacy Act systems of records in conducting computer matching programs. Included is the requirement that an agency Data Integrity Board agency. The following changes define computer matching under the Act; incorporate some of the Act's procedural requirements, including **Federal Register** publication, submission of matching proposals to the Postal Service, and execution of matching agreements; and describe the responsibilities and makeup of the USPS Data Integrity Board.

List of Subjects in 39 CFR Parts 262 and 266

Definitions, Privacy, Records and information management.

For the reasons set out in this notice, the Postal Service is amending parts 262 and 266 of title 39 of the Code of Federal Regulations as follows:

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

1. The authority citation for part 262 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Paragraphs (c) and (d) are added to § 262.5 as follows:

§ 262.5 Systems (Privacy).

* * * * *

(c) *Computer matching program.* A "matching program," as defined in the Privacy Act, 5 U.S.C. 552a(a)(8), is subject to the matching provisions of the Act, published guidance of the Office of Management and Budget, and these regulations. The term "matching program" includes any computerized comparison of:

(1) A Postal Service automated system of records with an automated system of records of another Federal agency, or with non-Federal records, for the purpose of:

(i) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(ii) Recouping payments or delinquent debts under such Federal benefit programs;

(2) A Postal Service automated personnel or payroll system of records with another automated personnel or payroll system of records of the Postal Service or other Federal Agency or with non-Federal records.

(d) *Other computer matching activities.* (1) The following kinds of computer matches are specifically excluded from the term "matching program":

(i) Statistical matches whose purpose is solely to produce aggregate data stripped of personal identifiers.

(ii) Statistical matches whose purpose is in support of any research or statistical project.

(iii) Law enforcement investigative matches whose purpose is to gather evidence against a named person or persons in an existing investigation.

(iv) Tax administration matches.

(v) Routine administrative matches using Federal personnel records, provided that the purpose is not to take any adverse action against an individual.

(vi) Internal matches using only records from Postal Service systems of records, provided that the purpose is not to take any adverse action against any individual.

(vii) Matches performed for security clearance background checks or for foreign counterintelligence.

(2) Although these and other matching activities that fall outside the definition of "matching program" are not subject to the matching provisions of the Privacy Act or OMB guidance, other provisions of the Act and of these regulations may be applicable. No matching program or other matching activity may be conducted without the prior approval of the Records Officer.

PART 266—PRIVACY OF INFORMATION

3. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 266.2 [Amended]

4. Section 266.2 is amended by removing "and" before "(f)" and the period at the end of the paragraph and adding "; and (g) of the establishment or revision of a computer matching program."

5. Paragraph (d) is added to § 266.3 as follows:

§ 266.3 Responsibility.

* * * * *

(d) *Data Integrity Board*—(1) *Responsibilities.* The Data Integrity Board oversees Postal Service computer matching activities. Its principal function is to review, approve, and maintain all written agreements for use of Postal Service records in matching programs to ensure compliance with the Privacy Act and all relevant statutes, regulations, and guidelines. In addition, the Board annually reviews matching programs and other matching activities in which the Postal Service has participated during the preceding year to determine compliance with applicable laws, regulations, and agreements; compiles a biennial matching report of matching activities; and performs review and advisement functions relating to records accuracy, recordkeeping and disposal practices, and other computer matching activities.

(2) *Composition.* The Privacy Act requires that the senior official responsible for implementation of agency Privacy Act policy and the Inspector General serve on the Board. The Records Officer, as administrator of Postal Service Privacy Act policy, serves as Secretary of the Board and performs the administrative functions of the Board. The Board is composed of these and other members designated by the Postmaster General, as follows:

(i) Vice President/Controller (Chairman).

(ii) Chief Postal Inspector in his or her capacity as Inspector General.

(iii) Vice President, Employee Relations.

(iv) General Counsel.

(v) Records Officer (Secretary).

6. Paragraph (b)(6) is added to § 266.4 as follows:

§ 266.4 Collection and disclosure of information about individuals.

* * * * *

(b) * * *

(6) *Computer matching purposes.* Records from a Postal Service system of records may be disclosed to another agency for the purpose of conducting a computer matching program or other matching activity as defined in paragraphs (c) and (d) of § 262.5, but only after a determination by the Data Integrity Board that the procedural requirements of the Privacy Act, the guidelines issued by the Office of Management and Budget, and these regulations as may be applicable are met. These requirements include:

(i) *Routine use.* Disclosure is made only when permitted as a routine use of the system of records. The USPS Records Officer determines the applicability of a particular routine use and the necessity for adoption of a new routine use.

(ii) *Notice.* Publication of new or revised matching programs in the **Federal Register** and advance notice to Congress and the Office of Management and Budget must be made pursuant to paragraph (f) of § 266.5.

(iii) *Computer matching agreement* The participants in a computer matching program must enter into a

written agreement specifying the terms under which the matching program is to be conducted (see § 266.10). The Records Officer may require that other matching activities be conducted in accordance with a written agreement.

(iv) *Data Integrity Board approval.* No record from a Postal Service system of records may be disclosed for use in a computer matching program unless the matching agreement has received approval by the Postal Service Data Integrity Board (see § 266.10). Other matching activities may, at the discretion of the Records Officer, be submitted for Board approval.

* * * * *

7. Paragraph (f) is added to § 266.5 as follows:

§ 266.5 Notification.

* * * * *

(f) *Notification of computer matching program.* The Postal Service publishes in the **Federal Register** and forwards to Congress and the Office of Management and Budget advance notice of its intent to establish, substantially revise, or renew a matching program, unless such notice is published by another participant agency. In those instances in which the Postal Service is the "recipient" agency, as defined in the Act, but another participant agency sponsors and derives the principal benefit from the matching program, the other agency is expected to publish the notice. The notice must be sent to Congress and OMB 40 days, and published at least thirty (30) days, prior to (1) initiation of any matching activity under a new or substantially revised program, or (2) expiration of the existing matching agreement in the case of a renewal of a continuing program.

8. Paragraph (e) is added to § 266.8 as follows:

§ 266.8 Schedule of fees.

* * * * *

(e) The Postal Service may, at its discretion, require reimbursement of its costs as a condition of participation in a computer matching program or activity with another agency. The agency to be charged is notified in writing of the approximate costs before they are incurred. Costs are calculated in accordance with the schedule of fees at § 265.9.

9. Section 266.10 is added as follows:

§ 266.10 Computer matching.

(a) *General.* Any agency or Postal Service component that wishes to use records from a Postal Service automated system of records in a computerized comparison with other postal or non-postal records must submit its proposal to the USPS Records Officer. Computer matching programs as defined in paragraph (c) of § 262.5 must be conducted in accordance with the Privacy Act, implementing guidance issued by the Office of Management and Budget and these regulations. Records may not be exchanged for a matching program until all procedural requirements of the Act and these regulations have been met. Other matching activities must be conducted in accordance with the Privacy Act and with the approval of the Records Officer. See paragraph (b)(6) of § 266.4.

(b) *Procedure for submission of matching proposals.* A proposal must include information required for the matching agreement discussed in paragraph (d)(1) of this section. The Inspection Service must submit its proposals for matching programs and other matching activities to the USPS Records Officer through: Independent Counsel, Inspection Service, U.S. Postal Service, 475 L'Enfant Plaza SW, Rm 3417, Washington, DC 20260–2181.

All other matching proposals, whether from postal organizations or other government agencies, must be mailed directly to: USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW, Rm 8831, Washington, DC 20260–5240.

(c) *Lead time.* Proposals must be submitted to the USPS Records Officer at least 3 months in advance of the anticipated starting date to allow time to meet Privacy Act publication and review requirements.

(d) *Matching agreements.* The participants in a computer matching program must enter into a written agreement specifying the terms under which the matching program is to be conducted. The Records Officer may require similar written agreements for other matching activities.

(1) *Content.* Agreements must specify:

(i) The purpose and legal authority for conducting the matching program;

(ii) The justification for the program and the anticipated results, including, when appropriate, a specific estimate of any savings in terms of expected costs and benefits, in sufficient detail for the Data Integrity Board to make an informed decision;

(iii) A description of the records that are to be matched, including the data elements to be used, the number of records, and the approximate dates of the matching program;

(iv) Procedures for providing notice to individuals who supply information that the information may be subject to verification through computer matching programs;

(v) Procedures for verifying information produced in a matching program and for providing individuals an opportunity to contest the findings in accordance with the requirement that an agency may not take adverse action against an individual as a result of information produced by a matching program until the agency has independently verified the information and provided the individual with due process;

(vi) Procedures for ensuring the administrative, technical, and physical security of the records matched; for the retention and timely destruction of records created by the matching program; and for the use and return or destruction of records used in the program;

(vii) Prohibitions concerning duplication and redisclosure of records exchanged, except where required by law or essential to the conduct of the matching program;

(viii) Assessments of the accuracy of the records to be used in the matching program; and

(ix) A statement that the Comptroller General may have access to all records of the participant agencies in order to monitor compliance with the agreement.

(2) *Approval.* Before the Postal Service may participate in a computer matching program or other computer matching activity that involves both USPS and non-USPS records, the Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement. To be effective, the matching agreement must receive approval by each member of the Board. Votes are collected by the USPS Records Officer. Agreements are signed on behalf of the Board by the Chairman. If a matching agreement is disapproved by the Board, any party may appeal the disapproval in writing to the Director, Office of Management and Budget, Washington, DC 20503–0001, within 30 days following the Board's written disapproval.

(3) *Effective dates.* No matching agreement is effective until 40 days after the date on which a copy is sent to Congress. The agreement remains in effect only as long as necessary to accomplish the specific matching purpose, but no longer than 18 months, at which time the agreement expires unless extended. The Data Integrity Board may extend an agreement for one additional year, without further review, if within 3 months prior to expiration of the 18-month period it finds that the matching program is to be conducted without change, and each party to the agreement certifies that the program has been conducted in compliance with the

matching agreement. Renewal of a continuing matching program that has run for the full 30-month period requires a new agreement that has received Data Integrity Board approval.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–17780 Filed 7–20–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5015–7]

Approval and Promulgation of Implementation Plans; North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: This action corrects a typographical error in the **Federal Register** final rule for North Carolina published on June 23, 1994 at 59 FR 32365. This action added paragraph (c)(67) to § 52.1770. The correct paragraph is (c)(69). This action corrects this typographical error.

EFFECTIVE DATE: This action is effective July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this notice can be obtained by contacting Dick Schutt, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides, & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia. The telephone number is (404) 347–2864.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: July 1, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Therefore, 40 CFR part 52 is corrected by making the following correcting amendment as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart II—North Carolina

§ 52.1770 [Amended]

2. Section 52.1770, is amended by redesignating paragraph (c)(67), added June 23, 1994, at 59 FR 32365, as paragraph (c)(69).

[FR Doc. 94–17554 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[PA26–1–6221; FRL–5004–3]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the implementation of an oxygenated gasoline program in the Pennsylvania portion of the Philadelphia Consolidated Metropolitan Statistical Area (CMSA). This SIP revision was submitted to satisfy the Clean Air Act Amendments of 1990 (the Act) which requires all carbon monoxide nonattainment areas with a design value of 9.5 part per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. The intended effect of this action is to approve the oxygenated gasoline program. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on August 22, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly L. Bunker, (215) 597–4554.

SUPPLEMENTARY INFORMATION: On November 29, 1993 (58 FR 62563), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of an oxygenated gasoline program. The formal SIP revision was submitted by the Commonwealth of Pennsylvania on November 12, 1992. The revision included revisions to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions, and the additions of section 126.1 Oxygenate Content of Gasoline to 25 PA Code Chapter 126, Standards for Motor Fuels. These regulatory revisions were adopted by the Commonwealth on June 16, 1992 and became effective on August 29, 1992. On February 16, 1993, an amendment to the November 12, 1992 SIP revision was officially submitted to EPA. The amendment corrected a typographical error in 25 PA Code Chapter 121, section 121.1 in the definition of "oxygenated gasoline". The corrected version of the definition was effective on October 24, 1992. A more detailed analysis of the state submittal was prepared as part of the NPR action and is contained in a Technical Support Document (TSD) dated June 15, 1993, which is available from the Region III office listed in the **ADDRESSES** section of this notice.

Public comments were received from one group on the NPR. The American Institute of Certified Public Accountants (AICPA) submitted comments on December 29, 1993 which related to the attest engagement [1] requirements. A copy of the AICPA's comments can be found in the Pennsylvania oxygenated gasoline program SIP docket file which is available from the Region III office listed in the **ADDRESSES** section of this notice.

The AICPA had four comments on the NPR which are summarized as follows:

(1) The Pennsylvania regulations require the attest engagement report to be submitted within 60 days following the end of the control period and AICPA suggested that the filing deadline be extended to 120 days to be consistent with EPA guidelines;

(2) Pennsylvania regulations require attest engagements for both averaging and per gallon information, AICPA believes this is inconsistent with EPA guidelines;

(3) AICPA believes that Pennsylvania's implementation guidelines requirement that Certified Public Accountants (CPA) meet the

[1] Attestation engagements are performed by a certified public accountant or firm of certified public accountants. Attestation engagements are a review of the regulated parties records to assure accuracy. It serves as a means of improving compliance with the oxygenated gasoline program by identifying problem areas to the regulated parties.

general standards prescribed in "Government Auditing Standards, 1988 Revision, published by the Comptroller General of the United States' General Accounting Office" (GAS) should be deleted. AICPA commented that the standards that govern the conduct of the attest engagement are the AICPA Statement of Standards for Attestation Engagements (SSAE) and not the GAS; and

(4) The third column of the EPA NPR, page 62564, contained an error by using the word "account" in connection with "CPA" and the word should be changed to "accountant".

EPA has reviewed AICPA's comments and determined that the State requirements discussed in the first two comments are more stringent than EPA guidelines and can be required at the State's discretion, and therefore do not affect the approvability of this revision.

The third comment deals with the Pennsylvania's implementation guidelines which were not submitted as part of the SIP revision and therefore the comment is not relevant to the approvability of this revision. However, EPA has contacted the Pennsylvania Department of Environmental Resources (PADER) concerning this comment. PADER informed EPA that the section of the Pennsylvania implementation guidelines entitled "Auditor Qualifications" requires each auditor, who performs an attest engagement, to fulfill specific qualifications. One of the qualifications is that the auditor meet the general standards prescribed in the "Government Auditing Standards, 1988 Revision, published by the Comptroller General of the United States' General Accounting Office" (GAS). The subsequent section of the Pennsylvania implementation guideline, entitled "Agreed-upon Procedures", does require that the auditor comply with the AICPA Statement of Standards for Attestation Engagements (SSAE) when performing the attest engagement. This section of the Pennsylvania implementation guideline, entitled "Agreed-upon Procedures", addresses the third comment raised by the AICPA.

With regard to the last comment, EPA acknowledges that it made a typographical error in the NPR, page 62564, and agrees that the word "account" should have read "accountant."

Other specific requirements of the oxygenated gasoline program and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

Final Action

EPA is approving the amendments to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions, the addition of section 126.1 Oxygenate Content of Gasoline to 25 PA Code Chapter 126, Standards for Motor Fuels, and the correction in 25 PA Code Chapter 121, General Provisions, section 121.1 in the definition of "oxygenated gasoline."

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (Insert date 60 days from date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's oxygenated gasoline regulation may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 28, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart NN of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(88) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(88) Revisions to the Pennsylvania Regulations for an oxygenated gasoline program submitted on November 12, 1992 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Letter of November 12, 1992 from the Pennsylvania Department of Environmental Resources transmitting the oxygenated gasoline regulation as a SIP revision.

(B) Revisions to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions and the addition of section 126.1 Oxygenate Content of Gasoline to 25 PA Code Chapter 126, Standards for Motor Fuels. These revisions became effective August 29, 1992.

(C) The correction in 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions in the definition of "oxygenated gasoline". This correction became effective October 24, 1992.

(ii) Additional Material.

(A) Remainder of Pennsylvania State submittal.

(B) [Reserved].

[FR Doc. 94–17693 Filed 7–20–94; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[PP Docket No. 93–253; FCC 94–123]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order states the Commission's intention to use lotteries to award licenses for all cellular unserved areas in which applications were filed prior to July 26, 1993. This action is taken because the Commission indicated in a prior order in this proceeding that it would address in a separate action the

applicability of competitive bidding or lottery procedures to certain radio applications filed before July 26, 1993. The Commission concludes that this action to use random selection instead of competitive bidding to award licenses among these competing applications will serve the public interest.

FOR FURTHER INFORMATION CONTACT: Stephen Markendorff (202) 418–1320 or Geraldine Matise (202) 418–1300 in the Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order (Order) in PP Docket No. 93–253, adopted May 27, 1994 and released July 14, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of Order

In this Order, the Commission states its intention to use existing random selection procedures to choose from among mutually exclusive applications filed prior to July 26, 1993, for authorization to provide cellular service to unserved areas. This action is consistent with the Special Rule adopted in Section 6002(e) of the Budget Act. In the near future, the Commission's staff will issue a Public Notice rescheduling the two previously scheduled lotteries. Finally, the Commission stated that it will consider requests for approval of full market settlements and proceed with licensing where such approval is granted.

Ordering Clauses

Accordingly, *it is ordered* that selection from among mutually exclusive applications filed prior to July 26, 1993, to provide cellular service to unserved areas shall be by random selection, in accordance with existing Commission rules.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17699 Filed 7–20–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 24

[PP Docket No. 93–253]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published Tuesday, May 24, 1994 (59 FR 26741). The regulations related to the service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band (narrowband PCS).

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Toni Simmons, Office of Plans and Policy, (202) 418–2030.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections were adopted in the Third Report and Order, PP Docket No. 93–253, FCC 94–98, adopted April 20, 1994, and released May 10, 1994.

Need for Correction

As published, the final regulations contain minor errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on May 24, 1994 of the final regulations (FCC 94–98), which were the subject of FR Doc. 94–12165, is corrected as follows:

§ 24.425 [Corrected]

Sec. 24.425(a) of the Commission's rules on page 26753, in the third column, is corrected by replacing the reference to "§ 24.5" in the second sentence with "§ 24.405."

Sec. 24.425(b), introductory paragraph, of the Commission's Rules on page 26753, in the third column, is corrected by replacing the reference to "§ 24.27(b)" with a reference to "Sec. 24.427(b)."

Sec. 24.425(b)(1) of the Commission's Rules on page 26753, in the third column, is replaced as follows:

"The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed."

§ 24.427 [Corrected]

Sec. 24.427 of the Commission's Rules on page 26754, in the second column, is corrected by redesignating paragraph (b)(1) as paragraph (b).

§ 24.429 [Corrected]

Section 24.429(a)(1) of the Commission's Rules on page 26755, in the first column, is corrected by adding a "(c)" after the first reference to "24.423."

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17700 Filed 7–20–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–16; Notice 03]

RIN 2127–AD09

Federal Motor Vehicle Safety Standards Seating Systems; Pedestal Seats

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Standard 207, *Seating Systems*, to establish a more appropriate test procedure for pedestal seats. Manufacturers of most pedestal seats will have a choice between the current test procedure or the new test procedure. The current test procedure applies a single load through the center of gravity (cg) of the entire seat. The new test procedure applies two separate loads, one through the cg of the portion of the seat above the adjuster and the other through the cg of the pedestal. This rule is a response to manufacturer concerns that the current Standard No. 207 test procedure imposes excessive loads on the adjuster for pedestal seats when the cg of the seat is located above the seat adjuster. (The adjuster is typically located between the pedestal and the seat.) Manufacturers believed that the current test procedure is inappropriate for seats whose cg is located above the adjuster because a portion of the load applied to the seat, and therefore imposed on the adjuster, represents the weight of the pedestal. In a real crash, only the weight of the seat that is above the adjuster would be imposed on the adjuster.

DATES: *Effective Date*: The amendments made in this rule are effective October 19, 1994.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than August 22, 1994.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC., 20590.

FOR FURTHER INFORMATION CONTACT: Dr. William J.J. Liu, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC., 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: On August 14, 1990, NHTSA published a notice of proposed rulemaking (NPRM) to amend Standard 207, *Seating Systems*, establish a more appropriate test procedure for pedestal seats (55 FR 33141). Under the proposed test procedure, the pedestal and the seat portion of a pedestal seat would each be separately, but simultaneously, loaded. The NPRM proposed definitions for a "pedestal seat," and parts thereof, to differentiate such seats from other seating systems.

March 8, 1993, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) for the same rulemaking (58 FR 12921). The SNPRM and the 1990 NPRM differed in two principal respects. The first concerned the definition of "pedestal seat." Instead of attempting to define and differentiate different parts of a pedestal seat from one another, as was done in the NPRM, the SNPRM simply divided pedestal seats into two portions, that above the adjuster and that below the adjuster. The second difference concerned whether the new test procedure would replace the current procedure or become an alternative to it. The new test procedure proposed in the SNPRM was virtually identical to that proposed in the NPRM, except that the SNPRM gave manufacturers the option of using either the current single load procedure or the new dual load test procedure for testing most pedestal seats.

The agency received six comments concerning the March 1993 SNPRM. In general, the commenters supported the SNPRM. All of the comments were considered when formulating this final rule, and the most significant comments are addressed below.

Definitions

The SNPRM proposed a new definition for "seat adjuster" as follows:

> "*Seat adjuster*" means the part of the seat that allows the seat bench and back to move forward and rearward, and/or to rotate around a vertical axis, including any fixed portion, such as a seat track. The term also means the uppermost seat adjuster in the case of a seat equipped with seat adjusters at different levels.

AM General Corp. (AM General), Chrysler Corp. (Chrysler), and Volvo GM Heavy Truck Corp. (Volvo) commented on the proposed definition. AM General and Chrysler commented that the proposed definition excluded nonadjustable pedestal seats and asked that the proposed test procedure also apply to that type of seat.

NHTSA agrees with AM General and Chrysler that the amendments proposed in the SNPRM apply only to adjustable pedestal seats. The focus of this rulemaking has always been manufacturer concerns that the current Standard No. 207 test procedure imposes excessive loads placed on the adjusters for pedestal seats. The current test procedure requires a single load to be applied through the center of gravity (cg) of the entire seat. If the cg of a pedestal seat lies at or above the adjuster, the test procedure places the load of the entire seat, including the pedestal, on the adjuster. However, in a real-world crash, the adjuster would not have loads imposed on it from the pedestal. NHTSA does not believe the same concerns apply to non-adjustable pedestal seats. In addition, NHTSA notes that extending this rule to non-adjustable pedestal seats would be outside the scope of notice of this rulemaking.

Volvo stated that the:

> (s)uspension seats in heavy trucks also include a fore and aft slide device which allows the seat to "float" and absorb the pitch moment generated by rough roads or uneven loading.

Volvo asked that the definition be changed to clarify that the adjuster is the part of the seat that provides forward and rearward positioning of the seat, rather than a part of the seat which allows the seat to move while the vehicle is in motion. NHTSA agrees that the Volvo change clarifies the definition and has adopted the change as suggested.

Test Procedure

Adjustment Position (S5.1.1(a))

The test procedure proposed in the SNPRM specified that, if the height of the seat were adjustable, the loads were to be applied when the seat was in its highest adjustment position. Volvo stated that, since the seat belts of many heavy trucks are mounted on the seat, the compliance tests for Standard No. 207 and Standard No. 210, *Seat Belt Assembly Anchorages*, are regularly conducted simultaneously. Volvo stated that the requirement that the seat be adjusted to its highest adjustment position conflicted with Standard No. 210, which

> requires some loading conditions to be applied with the seat in the rearmost position and some of the belt anchors in the midpoint of any adjustment range. The Administration has previously interpreted NHTSA TP 210 for suspension seats to be in the vertical mid ride position.

The Recreation Vehicle Industry Association (RVIA), stated that the Standard No. 207 "test procedures have long stated that such a seat is to be tested at its *midpoint* adjustment."

Neither the current Standard No. 207 nor Standard No. 210 have height adjustment requirements for testing adjustable seats. However, the current version of the Laboratory Test Procedure for Standard No. 207 specifies the highest point adjustment (P. 25, Figure 6, "Forward and Aft Loads on Seat Frame with Seat Belts Attached to Seat," TP–207–09, January 18, 1992.) NHTSA would like to emphasize that the Laboratory Test Procedures are provided to contracted laboratories as guidelines for conducting compliance tests, and do not limit the requirements of the applicable Federal motor vehicle safety standards. Since Standard No. 207 does not limit the adjustment position, the seat is required to meet the current requirement in all adjustment positions, and the fact that a test procedure specifies a specific adjustment position does not limit this requirement.

Section S4.3.2 of Standard No. 210 specifies that the seat is to be adjusted "to its full rearward and downward position * * *" However, this section is related to the seat belt angle location requirements, and does not necessarily apply to load testing.

None of the commenters offered a convincing argument as to why NHTSA should not specify the adjustment position. Since NHTSA believes that having to meet Standard No. 207 in the proposed highest adjustment position would necessitate designing a stronger, safer seat than having to meet the standard in another adjustment position, NHTSA has retained the procedure as proposed.

Horizontal Plane (S5.1.1(a)(1))

Chrysler commented that the language of S5.1.1(a)(1), "* * * horizontal plane tangent to the lowest surface of the seat adjuster * * *," did not reflect some of the seat adjuster designs on its vehicles. Chrysler stated that the lowest mounting surface on some designs did not lie in

a horizontal plane, and the forward/rearward motion of some designs was not linear. For this reason, Chrysler suggested that the word "horizontal" be deleted from this section.

NHTSA agrees with Chrysler it is not possible to specify the horizontal plane tangent to the lowest surface of the seat as the tangent to the lowest surface of some seat adjusters will not be horizontal. The purpose of S5.1.1(a)(1) is to define whether the load is in (or above) any part of the seat adjuster, which will allow manufacturers the option of using either test procedure. Since the applied test load is horizontal and the tangent plane to the lowest surface of the adjuster may not be horizontal for all possible cases, the word "tangent" is deleted.

As explained above, NHTSA is amending Standard No. 207 because the application of a single load imposes an unnatural load on the seat adjuster if the cg is at or above the adjuster. Therefore, NHTSA is amending S5.1.1(a)(1) to allow manufacturers the option of applying either one or two loads whenever the horizontal plane containing the cg either contacts any portion of the seat adjuster or is above the seat adjuster. Section S5.1.1(a)(3) has also changed to reflect the change in S5.1.1(a)(1).

Not Physically Possible

NHTSA proposed to allow manufacturers a choice between the current test procedure and the new test procedure whenever the cg of the seat was above the adjuster unless it was "not physically possible" to use the dual load test procedure. Volvo objected to the language in proposed S5.1.1(a)(2) requiring manufacturers to use the single load test procedure when it is "not physically possible" to use the dual load test procedure since this limited a manufacturer's choice.

Based on the testing done by the agency, the pedestal must be approximately 4 inches high for it to be physically possible to use the test device. Since the agency no longer defines a pedestal seat in relation to the height of the pedestal, NHTSA believes that this limitation is necessary. If NHTSA did not include this limitation, the agency might be precluded from conducting a compliance test in the case of a pedestal seat whose pedestal is too short to accommodate the test device.

Specification of Dual Load Procedure for Some Pedestal Seats

The SNPRM proposed S5.1.1(a)(3) specified the use of the new dual load test procedure whenever the cg of the seat "is located below the horizontal plane tangent to the lowest surface of the seat adjuster." Ford Motor Co. (Ford) stated that it believed that this section should specify the use of the single load test procedure instead of the dual load test procedure. It provided no explanation for its belief.

Ford's suggestion is inappropriate. Specifying the use of the dual load test procedure when the cg is below the seat adjuster ensures that test loads will be applied to both the pedestal and the seat. If a single load were applied, only the strength of the attachment of the pedestal to the vehicle, and not the strength of the attachment of the seat to the pedestal, would be tested.

Clarification of S5.1.1(a)

NHTSA has made various minor changes to S5.1.1(a) for the purpose of clarifying and simplifying the language.

Effective Date

The SNPRM proposed that the effective date for the option to use either the single or dual load test procedure be 90 days after publication of the final rule. RVIA urged NHTSA to adopt an effective date at least one year following publication of the final rule. RVIA stated that the proposed effective date "does not provide sufficient lead time for manufacturers to deplete existing stock, conduct additional tests under *either* procedure, and make any necessary design or structural modifications.

NHTSA disagrees with RVIA's reasoning. The only type of seat for which modifications might be necessary are seats whose cg is below their seat adjuster. All other seats either will continue to be required to be certified to the current test procedure or will have the option of certifying to the current test procedure, and therefore, will not require modification. NHTSA is not aware of any current seat designs whose cgs are below their adjusters. Therefore, NHTSA continues to believe the 90 day leadtime is sufficient.

Rulemaking Analyses and Notices

EXECUTIVE ORDER 12866 AND DOT REGULATORY POLICIES AND PROCEDURES: NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

This action will have no economic impacts other than a one-time cost related to the test fixture, for those manufacturers choosing the new procedure. In particular, they would have to add pneumatic or hydraulic rams to their test set-up. It is estimated that there would be a one-time set-up cost of $2,500. The test procedure would not require any design, retooling, or assembly changes.

REGULATORY FLEXIBILITY ACT: NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Vehicle manufacturers typically would not qualify as small entities. While some manufacturers of pedestal seats and seat belt attachments may be small entities, for the reasons stated above, NHTSA believes this final rule would not significantly affect them. The final rule will not affect the costs of pedestal seats, since the new procedure is optional. Because of this, small organizations and governmental units that purchase vehicles with pedestal seats should not be affected by this final rule.

PAPERWORK REDUCTION ACT: In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

NATIONAL ENVIRONMENTAL POLICY ACT: NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

EXECUTIVE ORDER 12612 (FEDERALISM): Finally, NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

CIVIL JUSTICE REFORM: This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative

proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.207 [Amended]

2. Section 571.207 is amended by revising the heading of S3 and adding a new definition of "*Seat adjuster*" to S3 in alphabetical order; and by revising S4.2.1, and S5.1.1 to read as follows:

§ 571.207 Standard No. 207, Seating Systems.

* * * * *

S3 *Definitions.*

* * * * *

Seat adjuster means the part of the seat that provides forward and rearward positioning of the seat bench and back, and/or rotation around a vertical axis, including any fixed portion, such as a seat track. In the case of a seat equipped with seat adjusters at different levels, the term means the uppermost seat adjuster.

* * * * *

4.2.1 *Seat adjustment.* Except for vertical movement of nonlocking suspension type occupant seats in trucks or buses, each seat shall remain in its adjusted position when tested in accordance with the test procedures specified in S5.

* * * * *

S5.1.1 *For a seat whose seat back and seat bench are attached to the vehicle by the same attachments.*

(a) For a seat whose seat back and seat bench are attached to the vehicle by the same attachments and whose height is adjustable, the loads are applied when the seat is in its highest adjustment position in accordance with the procedure or procedures specified in S5.1.1(a)(1), S5.1.1(a)(2), or S5.1.1(a)(3), as appropriate.

(1) For a seat whose center of gravity is in a horizontal plane that is above the seat adjuster or that passes through any part of the adjuster, use, at the manufacturer's option, either S5.1.1(b) or, if physically possible, S5.1.1(c).

(2) For a seat specified in S5.1.1(a)(1) for which it is not physically possible to follow the procedure in S5.1.1(c), use S5.1.1(b).

(3) For a seat whose center of gravity is in a horizontal plane that is below the seat adjuster, use S5.1.1(c).

(4) For all other seats whose seat back and seat bench are attached to the vehicle by the same attachments, use S5.1.1(b).

(b) Secure a strut on each side of the seat from a point on the outside of the seat frame in the horizontal plane of the seat's center of gravity to a point on the frame as far forward as possible of the seat anchorages. Between the upper ends of the struts attach a rigid cross-member, in front of the seat back frame for rearward loading and behind the seat back frame for forward loading. Apply the force specified by S4.2(a) or S4.2(b) horizontally through the rigid cross-member as shown in Figure 1.

(c) Find "cg_1," the center of gravity of the portion of the seat that is above the lowest surface of the seat adjuster. On each side of the seat, secure a strut from a point on the outside of the seat frame in the horizontal plane of cg_1 to a point on the frame as far forward as possible of the seat adjusted position. Between the upper ends of the struts attach a rigid cross-member, in front of the seat back frame for rearward loading and behind the seat back frame for forward loading. Find "cg_2," the center of gravity of the portion of the seat that is below the seat adjuster. Apply a force horizontally through cg_1 equal to 20 times the weight of the portion of the seat represented by cg_1, and simultaneously apply a force horizontally through cg_2 equal to 20 times the weight of the portion of the seat represented by cg_2.

* * * * *

Issued on July 15, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–17736 Filed 7–20–94; 8:45 am]

BILLING CODE: 4910–59–P

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49 CFR Part 571

[Docket No. 74–09; Notice 38]

RIN 2127–AE39

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends Standard No. 213, *Child Restraint Systems*, to facilitate the manufacture of "belt-positioning" child seats (i.e., booster seats designed to be used with the vehicle's lap/shoulder belts). The amendment adopts performance and labeling requirements and test criteria for belt-positioning booster seats that are more appropriate than Standard 213's current criteria for these child seats. This document also specifies that child booster seats must be labeled as being suitable for children weighing not less than 30 pounds.

This rule responds to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA")), which directed the agency to initiate rulemaking on child booster seat safety and other issues.

DATES: This rule is effective on August 22, 1994.

The incorporation by reference of the material listed in this document is approved by the Director of the Federal Register as of August 22, 1994.

Petitions for reconsideration of the rule must be received by August 22, 1994.

ADDRESSES: Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C., 20590 (telephone 202–366–4919).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

a. Statutory Origins of This Rulemaking

This final rule regarding child booster seats responds to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA"), Pub. L. 102–240), which directed the agency to initiate rulemaking on child booster seat safety and other issues. This rule was preceded by an advance notice of proposed rulemaking (ANPRM) published on May 29, 1992 (57 FR 22682), and an NPRM published on September 3, 1993 (58 FR 46928).

The ISTEA directive on booster seats originated in S. 1012, a bill reported by the Senate Committee on Commerce, Science, and Transportation and added verbatim to the Senate's surface transportation bill (S. 1204). The Senate Commerce Committee report on S. 1012 expressed concern about suggestions that booster seats, "depending on their design, can be easily misused or are otherwise harmful," and that some child booster seats "may not restrain adequately a child in a crash." The Committee's concerns grew out of a study [1] performed by Calspan Corporation. Calspan found that then-manufactured booster seats could adequately restrain the 3-year-old (33 pound) test dummy that is used to test the seats for compliance with Standard 213. However, Calspan also found that when the booster seats were tested with a 9-month-old and a 6-year-old test dummy, the booster seats could not adequately restrain those dummies. Yet, the booster seats were recommended by their manufacturers as being suitable for children in the 9-month-old and 6-year-old weight ranges.

The Calspan study indicated that booster seat safety could be improved if booster seats were capable of properly restraining the wide range of manufacturers' recommended child sizes. Belt-positioning booster seats are capable of accommodating a wider range of child sizes than currently manufactured shield-type booster seats. Moreover, belt-positioning seats used with vehicle lap/shoulder belts appear to perform better than shield booster seats used with vehicle lap/shoulder belts.

Pursuant to the ISTEA directive, NHTSA issued two notices of proposed rulemaking (NPRM's). The first addressed booster seat performance and labeling requirements; the second, dummies for use in testing booster seats and other child restraint systems.

b. Booster NPRM

NHTSA proposed to amend Standard No. 213, *Child Restraint Systems*, to facilitate the manufacture of "belt-positioning" child seats (boosters designed to be used with the vehicle's lap/shoulder belts). The NPRM would add a definition of "belt-positioning seat" to the standard, and amend the definition of "booster seat" to include belt-positioning booster seats. Standard 213's compliance test procedures would be amended to specify that belt-positioning seats are dynamically tested when restrained to the test apparatus with a lap/shoulder belt. The NPRM described the test apparatus in detail to ensure that the test would be carefully controlled. NHTSA also proposed to amend labeling and informational requirements to decrease the likelihood that belt-positioning booster seats would be misused. The agency believed that the proposed performance and labeling requirements would be more appropriate than Standard 213's current criteria for these boosters.

c. Dummy NPRM

NHTSA also issued an NPRM to add additional child compliance test dummies to Standard 213. (59 FR 12225, March 16, 1994.) The NPRM tentatively selected three new child dummies to add to Standard 213. These dummies are the newborn infant dummy described in subpart K of 49 CFR part 572 (NHTSA's regulation on anthropomorphic test dummies), the 9-month-old dummy in subpart J, and the instrumented 6-year-old dummy in subpart I. Subjecting booster seats and other child restraint systems to more thorough compliance testing with additional dummies better ensures that each child restraint safely restrains the range of children for whom the restraint is recommended. (Readers should note that, if proposals from the March 1994 NPRM are adopted, those amendments could modify some of the requirements adopted today, such as the labeling specified for booster seats.)

d. Overview of Comments on Booster NPRM

The response to the NPRM was very favorable. Commenters included vehicle and child seat manufacturers (Volvo, Ford, Chrysler and Cosco) and child passenger groups and consultants (Tarrant County Child Car Safety Coalition, Solutions Unlimited, the University of Michigan-Child Passenger Protection Program (UM–CPP), Ms. Deborah Davis Stewart, Advocates for Highway and Auto Safety). Commenters also included the American Academy of Pediatrics, the Air Transport Association and the National Transportation Safety Board. All commenters supported permitting the manufacture of belt-positioning booster seats. Many suggested changes about specific proposals, and several had suggestions for or commented on future work on belt-positioning and other booster seats. All comments were fully considered and the significant ones are addressed below.

e. Overview Comparison of Booster NPRM and Final Rule

This rule adopts most of the proposed amendments, with the following changes. The rule makes minor changes to the definition of a booster seat for clarification purposes. The rule corrects errors in the specification of the test apparatus used for belt-positioning booster seats, and does not require metric units on the child seat label.

II. Amendments for Belt-positioning Seats

a. Definitions

To facilitate the manufacture of belt-positioning seats and to distinguish those child seats from other types of seats for testing and labeling purposes, NHTSA amends Standard 213's definitions in three ways. The first amendment is to include belt-positioning booster seats in the present definition of "booster seat." NHTSA defines a belt-positioning seat as a type of booster seat because belt-positioning seats and present booster seats serve similar functions, i.e., both function to bridge the transition of the child from toddler or convertible child restraints to the vehicle belt systems. (A convertible restraint is specially adjustable so that it can be used rear-facing by an infant or a very young child, and forward-facing by a toddler. A "toddler" child restraint positions a child forward-facing only and is not capable of being adjusted to face an infant rearward.) It is also advantageous to place belt-positioning restraints in the same category as present (shield-type) boosters, because both types of child restraint systems appear to pose similar potential misuse problems. That is, both could be inappropriately used by children who are too small to be adequately restrained by a child booster seat. Similar countermeasures, such as labeling and instructional information, can be

[1] "Evaluation of the Performance of Child Restraint Systems" (DOT HS 807 297, May 1988). NHTSA's follow-up testing to the Calspan study is discussed in "Evaluation of Booster Seat Suitability for Children of Different Ages and Comparison of Standard and Modified SA103C and SA106C Child Dummies," VRTC–89–0074, February 1990.

developed to address those misuse problems.

The second amendment defines a belt-positioning seat. "Belt-positioning seat" is defined as:

> A child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in a forward impact.

This definition is the same as the one proposed in the NPRM. Commenters were generally supportive of the definition. Volvo asked for clarification that the definition applies to both add-on and built-in belt-positioning seats. The definition so applies. Volvo's uncertainty appears to have resulted from several proposed requirements that were worded in such a way that they were appropriate for add-on seats, but not for built-in ones. (E.g., as proposed, S6.1.2.1.1 stated that a belt-positioning seat "shall be secured to the standard vehicle seat" using a lap/shoulder belt.) NHTSA has reworded those sections to clarify the distinction between add-on and built-in seats to avoid any suggestion that the definition does not apply to built-in belt-positioning seats.

The third amendment slightly revises the definition of "booster seat." Standard 213 defines a booster seat as "a child restraint which consists of only a seating platform that does not extend up to provide a cushion for the child's back or head." (S4 of 49 CFR § 571.213) The NPRM would not have changed that definition except to add "or a belt-positioning seat" to the end of it. Ms. Weber of the University of Michigan Child Protection Program (UM-CPP) said that such a change would be confusing because it implies—contrary to NHTSA's intent—that belt-positioning seats must not have seat backs. She suggested Standard 213 should better distinguish between the traditional shield-type booster, which may not have a back, and a belt-positioning booster which may, by naming the former a "backless child restraint system." "This will help clarify the fact that a Belt positioning seat can have a back."

NHTSA concurs that naming the backless type of booster seat will help distinguish the two types of child seat. As a result of today's amendment, "booster seat" encompasses two types of restraint system for older children who are still too small to sit directly on a vehicle seat and use a vehicle belt system. One type is the traditional shield-type booster used with a Type I belt; the other is the belt-positioning seat used with a Type II belt system. The commenter's suggestion will help clarify that a belt-positioning seat can have a back, and a child booster other than a belt-positioning seat cannot.

The absence of a seat back for boosters other than belt-positioning seats is one of the main features that distinguishes a booster seat from a convertible child seat. The distinction is important for Standard 213 testing. The standard specifies that most restraints are to be anchored with only a lap belt during agency compliance testing. However, the standard permits a booster seat designed with a top anchorage strap (tether strap) to be tested at 30 mph with the tether attached. NHTSA permitted attachment of a tether for boosters to facilitate the manufacture of boosters that provide a harness system, rather than a short shield, for upper torso restraint. Some child safety researchers believed a harness system was superior to a shield in terms of abdominal loading, head and neck loading, submarining and ejection. (51 FR 5335.)

Cosco raised a concern about NHTSA's proposal to simply add "or a belt-positioning seat" at the end of the present "booster seat" definition. Cosco believed that the change would be inadequate because it would not allow shield-type boosters to have a seat back. (As explained above, under Standard 213's present definitions, a child restraint cannot have a seat back and be considered a "booster seat." This restriction is to limit the numbers and types of child restraints that can be tested in Standard 213's 30-mph dynamic test with their tether attached.) The commenter said that safety data do not show a need to prohibit seat backs on booster seats. Cosco requested that the definition be reworded either to allow both types of boosters to use a seat back or to prohibit both from doing so.

NHTSA declines to adopt the change requested by Cosco. NHTSA agrees with Cosco that data do not indicate a safety need to prohibit seat backs on belt-positioning seats. However, the commenter suggests amending the "booster" definition such that a seat back would be an acceptable feature on a shield booster. That suggestion is beyond the scope of the NPRM and has not been adopted.

In further response to Cosco, the absence or presence of a seat back is the only feature that distinguishes shield-type boosters from toddler or convertible child restraint systems. Distinguishing booster seats from other child restraint systems is important because Standard 213 provides that a tether on a booster seat may be tested in the 30 mph dynamic test, while a tether on a toddler or convertible child restraint system will not be attached. NHTSA does not attach the tether when testing toddler and convertible restraints because many consumers do not properly attach tethers on their child seats. Limiting the use of a tether in the test better ensures that child seats perform satisfactorily as they are typically used in the real world. If boosters were permitted to have seat backs, a new way to distinguish shield booster seats from other types of child restraint systems would have to be developed.

An alternative approach to distinguishing between shield booster seats and other child restraint systems could be to remove the reason for having to distinguish between the restraint systems. That is, NHTSA could amend Standard 213 to specify that all child restraint systems, including shield boosters, would be tested without attaching any tethers. NHTSA believes all booster seats are currently manufactured without a tether. The agency will consider for future rulemaking whether Standard 213 should continue to specify attaching tethers on shield boosters in the standard's 30 mph dynamic test.

b. Test Procedures

1. Type of Belt System Used To Test Belt-Positioning Seats

The agency is amending Standard 213's test procedures to specify the testing of belt-positioning seats using a lap/shoulder belt. Cosco commented that there should be a misuse test in which a belt-positioning booster is tested with a lap belt. The commenter said research has shown that the HIC and head excursions of dummies in belt-positioning seats tested with lap belts were much greater than the limits in Standard 213. Conversely, the NTSB stated that, "Because there is no information on the extent of booster seat misuse * * * it appears premature to require misuse tests."

NHTSA is not requiring testing belt-positioning seats secured by a lap belt only. Standard 213's approach is to require child restraint systems to be tested in configurations they were designed for, absent information showing that misuse of the restraints are resulting in safety problems. The reason for this approach is that child seat manufacturers must design many safety features into their child restraint systems to protect a restrained child. To do this, the manufacturers must anticipate how the restraint will be used and design safety into their system bearing in mind their assumptions about such use. The manufacturer's

assumptions about the expected use of the restraint are reflected in the use instructions to the consumer. Today's rule requires belt-positioning seats to be conspicuously labeled with instructions about the proper use of the seat, including information on the appropriate vehicle belt system to be used. Absent information showing a safety need for a belt misuse test, it is premature to require testing belt-positioning boosters with only a lap belt.

2. Standard Seat Assembly

This rule adopts test specifications appropriate for testing belt-positioning seats. The agency believes that the specifications for the testing procedure should be sufficiently detailed so tests conducted uniformly by various organizations would provide the same results. This presupposes that the test conditions that affect the performance of the dummy/child restraint should be standardized. Accordingly, NHTSA amends the provisions concerning the standard seat assembly used to test child restraint systems to depict added anchorages for the shoulder belt system. This rule specifies a Type II seat belt assembly for use in testing belt-positioning seats. The standard belt system eliminates the variability of these belt parameters. In response to Ford and UM-CPP, this rule also modifies some of the specifications proposed in the NPRM.

Ford and UM-CPP suggested that the rule should specify the type of latch plate, and further suggested "that a locking latch plate is appropriate, given the new rule on lap belt lockability." NHTSA has specified that retractors and reels are not used in the standard seat assembly, which is what was proposed in the NPRM. Since retractors and reels are absent, the latch plate functions as a locking latchplate. The agency agrees with these commenters that this is appropriate given the FMVSS No. 208 lockability requirements that will be effective on September 1, 1995.

The agency's lockability final rule published in the Federal Register on October 13, 1993, "requires that lap belts or the lap belt portion of lap/shoulder belts be capable of being used to tightly secure child safety seats, without the necessity of the user's attaching any device to the seat belt webbing, retractor, or any part of the vehicle in order to achieve that purpose." This requirement applies to rear vehicle seating positions that are recommended, in FMVSS No. 213, as the safest positions for placing a child restraint system. The latchplate used for Standard 213 testing will be consistent with the lockability requirement, and will reflect the type and operation of latchplates used in vehicles for attaching child restraint systems.

Ford and UM-CPP said that the buckle assembly length should be specified as measured from the inboard anchor, "such that the length exposed beyond the bight is consistent with the maximum allowed by SAE J1819." NHTSA agrees that the length of the belt exposed beyond the bite (i.e., the intersection of the seat back and seat cushion) needs to be specified and agrees with using the value recommended by the Society of Automotive Engineers (SAE) in its draft recommended practice J1819, "Securing Child Restraint Systems in Motor Vehicles." The J1819 draft recommended practice is a result of a joint effort of manufacturers of motor vehicles and child restraint systems to promote compatibility between child restraints and vehicle seats and seat belts. As stated in the draft recommended practice, "[C]hild restraint systems and vehicle seats and seat belts having features that conform to this document are more likely to be compatible with one another." By using the J1819 value, the agency not only specifies a uniform standard test procedure but also reinforces the guidelines that promote the compatibility between child restraints and vehicle seats and seat belts. Accordingly, NHTSA has revised Figures 1A and 1B and the addendum (addendum A, Seat Base Weldment, dated July 1, 1993) to the Drawing Package SAS–100–1000 to show the length of the buckle assembly. (The materials have also been revised to round off the dimensions to the whole millimeter.)

Ford suggested that tension in the standard belt be set at the 2 to 4 pound (9 to 18 N) force specified in Standard 208, rather than the 12 to 15 pound (53 to 67 N) force specified by Standard 213 for securing add-on child seats. Ford said that the former range is more representative of the tension induced in a typical Type 2 belt by the emergency locking retractor. NHTSA agrees. This rule adopts the proposed requirement in S6.1.1.3 stating that—

> [T]hese seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 2 inches, and are attached to the anchorage points without the use of retractors or reels of any kind.

However, the agency has replaced S6.1.2.2 with a new section to specify preloading of the various belts. The new section maintains the current 12 to 15 pounds pretensioning of the lap belt that restrains the add-on child restraint to the test seat assembly, but specifies that the shoulder portion of the Type 2 belt should be pretensioned to a 2-pound force as in FMVSS 208.

UM-CPP suggested that the shoulder belt should not be tightened to 12 to 15 lb prior to the test as is currently required for lap belts. It said that a procedure to determine the tension in the shoulder portion of the belt may be needed. The commenter suggested that a procedure consisting of placing a curved block with a given radius against the dummy's chest, tightening the belt to the usual tension, and removing the block before the test, is a repeatable method of introducing appropriate slack when tightening the belt. NHTSA disagrees that the suggested procedure is necessary. Today's rule adopts a procedure in S6.1.2.2 which specifies that the tension of the shoulder belt is measured by a load cell placed on the webbing portion of the belt system prior to the dynamic test. Thus, there is a procedure for ensuring that the belt has the proper tension. NHTSA believes it is immaterial how the belt is tightened as long as the requisite tensile force is achieved. Moreover, a procedure for tightening the belts can be addressed in the Laboratory Procedures for the Standard 213 dynamic test. Describing the procedure in the laboratory procedures is preferable to describing it in the standard because there might be ways to tighten the belt (e.g., by use of a metallic roller) that might be easier to use than another procedure (e.g., use of a wooden block), that lead to equally uniform and repetitively consistent results.

Ford stated that additional specifications for belt elongation are needed for the seat belt assembly to be used in testing belt-positioning booster seats. Ford said that—

> Standard 209 allows use of webbing having any elongation up to 30 percent in Type 2 belts. Using webbing with 30 percent elongation for the lap/shoulder belt on the standard test seat may result in quite different results than using webbing of 7 percent elongation.

It suggested that S6.1.1.3 be amended to include a close tolerance specification for elongation of the standard belt webbing used in the Standard 213 test for all child restraint systems, based on typical polyester belt webbing, such as the draft ECE 44 Annex 13 standard seat belt webbing specification of 8±1 percent at 11 kN.

NHTSA does not believe there is a need to specify the elongation of the webbing material used for testing belt-positioning seats. Standard 213 does not

currently specify the elongation of the webbing used for testing child restraint systems. Further, NHTSA is unaware of information indicating that elongation should be specified. (Under S4.2(c) of Standard 209, the webbing in a Type I seat belt assembly shall not extend to more than 20 percent elongation at 2,500 pounds.) There is no apparent reason why elongation should be specified for the Type 2 assemblies used to test belt-positioning seats, when elongation is not specified for the Type I assemblies used to test all other child restraint systems. Also, not specifying elongation better ensures the dynamic test is representative of real-world crash conditions. NHTSA obtains webbing material from seat belt suppliers for use in Standard 213's dynamic test. These suppliers also furnish vehicle manufacturers with the webbing used in motor vehicles. Under current Standard 213 test procedures, NHTSA tests child restraint systems using webbing that is typical of that installed in vehicles. Any manufacturer that is concerned about the possible effect that elongation might have on the performance of the child restraint can identify and perform a "worst case." A manufacturer may determine that a child restraint meeting Standard 213's performance criteria when tested under worst case conditions will likely meet those criteria when tested under less severe conditions. A manufacturer that tests its restraint for certification purposes could limit its testing by deciding to test only a "worst case" scenario, i.e., testing under the most austere or unfavorable conditions and circumstances specified in the standard.[2]

Ford and UM–CPP pointed out an error in the location of the inboard anchor point. UM stated that the location

> [D]oes not follow the research results reported in DOT–HS–808003, TABLE 9, and has an unintended negative effect on test results. Although the lateral (Y) position relative to the outboard anchor has been used, the X and Z dimensions of the old center anchors have been retained. This inappropriately low anchor creates an especially long inboard belt length which, when loaded during the test, makes the booster suddenly shift toward the outboard anchor, sometimes shoving the dummy's neck into the shoulder belt and sometimes leaving the upper torso lagging behind at an angle, depending on the initial geometry. This occurs because the effective center of this very asymmetrical belt, when loaded, is not halfway along the Y axis.

UM–CPP recommended that the higher and more forward inboard anchor location, determined by NHTSA's research, be used. Ford also commented that—

> Anchorages for the lap portion of the lap/shoulder belt on the standard test seat assembly are highly asymmetric, with the inboard anchorage about 185 mm lower than and rearward of the outboard anchorage. Such highly asymmetric anchorages are atypical. The outboard anchorage also appears to be unusually high.

Ford suggested that anchorages be located based on the average dimensions of the vehicles surveyed in the agency's research program.

NHTSA agrees with the comments made by Ford and UM. The proposed location for the anchor points was based on the average location of the anchorage points that was determined by the agency's research. However, among the proposed set of coordinates for the inboard anchor point, only the y-coordinate was based on the average location. The x- and z-coordinates of the old anchor were used. NHTSA will define all three coordinates of the inboard anchor point to reflect the location of the "average" condition identified by the NHTSA research.

In January 1994, tests were conducted at the agency's Vehicle Research and Test Center (VRTC), to verify that the change in anchorage point does not negatively affect the quality and consistency of the tests. Those tests were directly comparable to the tests in the earlier study, DOT–HS–808003, using the same booster/dummy configuration, except that the inboard anchorage was at the "old" location in the fore-aft and vertical axes. The tests showed that the corrected anchorage locations had a negligible affect on the performance of the child seats used to restrain 3- and 6-year-old dummies. That is, there was no marked difference in the performance of the child seats using the old anchorage locations as compared to the performance of the seats with the corrected locations. The principal difference observed in the kinematics was that the booster seat did not slide toward the outboard anchorage location when tested with the corrected inboard anchorage, as it tended to do using the old anchorage. This sliding is attributed to the asymmetry of the inboard and outboard anchorages when tested with the old anchorage configuration. A report on these VRTC tests is available in the docket for this rulemaking.

UM–CPP commented on the issue of the flexibility of the seat assembly's seatback for testing booster seats. The commenter believes the specified seatback is too flexible to represent real-world vehicle seats, and that the flexibility unrealistically affects booster test results. In the March 1994 dummy NPRM discussed above, NHTSA announced that its research has shown that rulemaking does not appear warranted on changing the flexibility of the seatback. The research evaluated the performance of booster seats when restrained under both conditions of flexible and rigid seat back test assembly. The research findings indicated that the flexibility of the seatback is not a factor that affects the test dummy's performance during compliance testing of shield-type booster seats. These findings were summarized in a report titled, "Evaluation of Effects of FMVSS 213 Seat Back's Flexibility on Booster Seat Responses," October 1992 (VRTC–82–0236, "Child Restraint Testing (Rulemaking Support)," DOT–HS–808006.

In commenting on this issue, UM said that the research was too limited. The commenter also did not agree with the conclusion not to undertake rulemaking

> A very limited investigation of the issue concluded that shield boosters that had passed compliance tests with the flexible seatback also passed with a rigid seatback. What the report did not acknowledge was the fact that, with the rigid back, knee excursion increases were significant, and rebound in every case saw the dummy rise well above the cushion and its head well above the seatback. The VRTC film footage is more dramatic than the still frames in the report, and it also shows the impacts of the dummy's head with the structure behind the seatback. * * * I recommend that the rigid seatback be adopted now at least for the 3-point belt test procedure.

NHTSA does not dispute that the flexibility of the back of the test seat assembly can affect a dummy's performance during compliance testing of shield-type booster seats. NHTSA also recognizes that there are good reasons to further evaluate the representativeness of the standard's test buck, concerning current vehicle seats. Moreover, NHTSA believes there might be other reasons that may justify changing the Standard 213 seat back, such as possible cost reductions due to not having to change the flexible pin in the seat hinges of the standard seat

[2] Relying on worst case testing es e basis for e manufecturer's certification is commonplece among manufacturers. For example, Stendard 208, "Occupant Crash Protection," requires injury criteria to be met with the test vehicle traveling forwerd at any speed "up to end including 30 mph" nto e fixed barrier "that is perpendicular to the line of travel of the vehicle, or et eny engle up to 30 degrees in either direction from the perpendicular" S5.1). Menufacturers typically test e vehicle et 30 mph into a perpendicular barrier since thet is the worst case test. The manufacturers believe thet if he vehicle passes thet worst case test, it is reasonable to conclude it will pass less severe tests e.g., at lower speeds into engled barriers).

assembly after each test. The agency has an on-going feasibility study at VRTC to determine if a need exists to upgrade the current FMVSS 213 test buck with regard to these issues.

However, NHTSA disagrees that the agency's research was too limited. NHTSA evaluated films and test reports for all (seven) available FMVSS 213 compliance tests on child booster seats that were performed in 1990 and 1991. In addition, sled tests were conducted on each of the booster seats that showed forward movement and contact with the dummy during the compliance testing. There were four of these seats. When the seat back was fixed (rigid), the dummy's knee excursion increased. However, the increased values for knee excursions did *not* exceed the 36-inch limit of FMVSS 213. In view of a lack of a safety need to revise the seat back, the agency has decided to complete the VRTC feasibility study before deciding whether to undertake rulemaking on the matter.

UM–CPP is correct that the dummy rose above the seat cushion when tested with the rigid seat back, and did impact its head on the structure located behind the test assembly. However, that finding is inconclusive because the impacted structure was placed on the test buck for the research and evaluation program on belt-positioning booster seats, and will not be part of the seat assembly used in FMVSS 213 compliance testing. Thus, the dummy's head will not impact the structure in an FMVSS 213 compliance test.

c. Performance Criteria

This rule adopts performance requirements for belt-positioning seats. This rule requires belt-positioning seats to meet the structural integrity, excursion, and injury criteria requirements of Standard 213 when dynamically tested. Those requirements include maintaining the structural integrity of the seat, retaining the head and knees of the dummy within specified excursion limits (limits on how far those portions of the body may move forward), and limiting the forces which the head and chest of the dummy may experience during the test. Compliance with these requirements better ensures that a child using the seat will not be injured by the collapse or disintegration of the seat, or by contact with the interior of the vehicle, or by experiencing intolerable forces. Commenters overwhelmingly supported dynamically testing belt-positioning seats.

This rule does not adopt additional performance requirements for belt-positioning seats. The NPRM asked for comments on the merits of additional performance requirements, and commenters disagreed with each other on the issue. UM–CPP and Solutions Unlimited believed that the weight of the booster seat should be limited in order to limit loading the back of a child occupant. Cosco said that it is unaware of any data that indicate a safety problem with the loads that could be generated by booster seat backs. Cosco said excessive back loading would result in either higher HIC's or higher G forces, and possibly greater excursions. The commenter believed it may be unnecessary for the agency to try to measure seat back loading, unless NHTSA has research showing this phenomenon is of potential concern.

Advocates also believed that Standard 213's dynamic test would detect problems relating to booster seat backs. The commenter urged NHTSA to—

> Carefully monitor and investigate defect complaints and manufacturer data related to special design features. These aspects of booster seats can be dealt with through future rulemaking specifically addressing a problem identified by manufacturer testing and consumer use.

NHTSA has decided not to specify limits on seat back loading at this time. There is a lack of data indicating a safety problem. Further, there is no procedure at present for measuring or determining a threshold value for the loads imposed.

d. Labeling and Printed Instructions

This rule adopts requirements for labeling and printed consumer instructions to decrease the likelihood that belt-positioning seats will be misused. The information that needs to be conveyed to the consumer is: (a) That a belt-positioning seat must be used with a vehicle lap/shoulder belt system to perform effectively and must not be used with just a vehicle lap belt; (b) when using a shield booster with a vehicle's lap/shoulder belt system, the consumer must place the shoulder belt portion of the system behind the child's head; and (c) the belt-positioning seat is not certified for aircraft use. Each of these items of information is discussed below. This rule does not adopt the proposal that the manufacturer's height and weight recommendations on the label include the information in metric units. In commenting on the NPRM, Tarrant County Child Car Safety Coalition said that the metric units would be extremely confusing to many parents. Similarly, Ford and Cosco commented that the proposed use of the word "mass" in the label would be confusing. NHTSA concurs that the metric information on the label is unnecessary at this time. (Pursuant to the agency's plan to convert to the metric system pursuant to the Omnibus Trade and Competitiveness Act and E.O. 12770, this rule specifies metric units in the specifications for Standard 213's compliance test procedures, *see e.g.*, figures 1A and 1B. Since these values will not be any part of a labeled child seat, the metric values will not engender confusion on the part of ordinary consumers.)

1. Appropriate Vehicle Belt System

NHTSA adopts a requirement that each add-on and built-in belt-positioning seat be labeled with a warning about using the seat with Type 1 or the lap portion of Type 2 belt systems in a vehicle. No commenter other than Chrysler disputed the need for the labeled warning. (Chrysler's comment is discussed below with respect to "dual purpose" boosters.) In response to Cosco's belief that the warning was proposed to be on a separate label, no such requirement was proposed. The warning can be on the existing installation label. Advocates for Highway and Auto Safety believed that there is need for an installation diagram showing the proper installation of the belt-positioning seat in a vehicle. The American Academy of Pediatrics believed the installation diagram should be placed directly on the child seat, and not on accompanying printed material. Child restraints are already required to be labeled with an installation diagram showing the restraint in the right front seating position in a vehicle, with a lap/shoulder belt (S5.5.2(l)).

NHTSA proposed a labeling requirement for "dual purpose" boosters. These boosters can be used with either a lap or a lap/shoulder belt in the shield mode, but only with a lap/shoulder belt in the belt-positioning mode. These seats also typically require different belt routing for the two modes. To better ensure the boosters are properly used, the agency proposed requiring dual purpose boosters to be labeled with information about the appropriate vehicle belt system (lap-only or lap/shoulder belt system, depending on the design of the booster) to use with the booster, and about how the booster must be used with the particular belt system (e.g., with or without the booster's shield).

Chrysler believed there is no need to label built-in dual purpose boosters that are factory-installed. Chrysler believed these seats are already labeled with too much information, and that the information on the proposed label "will mostly duplicate the information that is already provided in the [vehicle]

owner's manual." Conversely, Volvo commented that built-in belt-positioning seats ought to be labeled with information on correct belt usage.

NHTSA disagrees with Chrysler. There is a substantial amount of information that must be labeled on built-in seats. However, it is vitally important that built-in seats be used with the appropriate vehicle belt system. Instructing consumers how to use the belt-positioning booster increases the likelihood of correct usage. Further, the agency believes that consumers are more likely to refer to the information if it is "handy" on the seat rather than in the vehicle owner's manual. However, NHTSA is aware of concerns that there is too much information placed on child seat labels. The agency will evaluate the labeling mandated by Standard 213 in the near future to determine if changes are warranted.

2. Placement of Shoulder Belt

This rule requires manufacturers to label shield boosters with a warning to consumers that if the booster is used with a Type II belt system, the shoulder belt portion of the belt system should be placed behind the child. Comments on the proposed requirement were divided. UM–CPP "strongly support[ed]" the proposal because it found high head accelerations resulting from impact of the dummy's head with the dummy's arm. Cosco disagreed with the proposal, stating that the proposal "ignores the excellent performance of shield booster seats used with the shoulder belt in *front* of the child." (Emphasis in text.)

NHTSA disagrees with Cosco about the effectiveness of shield-type booster seats used with the shoulder belt routed in front of the child. The agency's VRTC Report No. DOT–HS–808–005 titled, "Evaluation of Belt Positioning Booster Seats and Lap/Shoulder Belt Test Procedures," summarized the findings of the agency's test program on different booster seats. The report stated that, for small shield booster seats, "the routing of the shoulder belt (three point belt) in front of the dummy did significantly effect the HIC, 3 msec chest clip [acceleration], and head excursion values, regardless of dummy size." Specifically, the study stated that:

> The 3 year old dummy/three point belt tests had 80% to 90% higher HIC values than the corresponding lap only belt tests, while for the 6 year old dummy, the three point belt tests were 18% to 59% higher. The 3 year old/three point belt tests were the only test conditions that produced HIC values above 1000.

The study also showed that the chest clip acceleration increased for the 3-year-old dummy tested in two shield booster seats, from 31G to 44G and from 38G to 45G, respectively. The chest acceleration increases for these seats were from about 36G to 52G and 28G to 44G respectively.

In short, NHTSA does not know of any shield-type booster seat that performs well when the booster seat is used with a lap/shoulder belt system and the shoulder portion of the belt system is left in front of the child.

3. Aircraft Use

This rule requires that belt-positioning seats be labeled with a statement that they are not certified for use on aircraft. The Air Transport Association and UM–CPP supported the proposed requirement but also suggested requiring all boosters to be so labeled. That suggestion is outside of the scope of the NPRM and has not been adopted. However, NHTSA and the Federal Aviation Administration are jointly examining this issue and may initiate a separate rulemaking, if warranted.

ATA was concerned that both the statement against aircraft use and the statement certifying to aircraft use are required to be in red. ATA suggested that the former statement be in a color other than red, to distinguish it from the latter. The commenter believed an other-than-red contrasting color will help airline personnel better identify which child seats are suitable for aircraft.

NHTSA does not agree with the suggestion that there is a need to require the use of an other-than-red contrasting highlight color to distinguish the warning against aircraft use from the certification to aircraft use. The red color is sufficient to draw the attention of airline personnel to a warning. NHTSA believes using a color other than red would not necessarily increase the level of awareness of the message contained in the warning. Rather, a message highlighted in red would catch the eye of the reader (in this case, airline personnel), who would then read the message. Further, because belt-positioning boosters lack any component in front of the child, they are readily distinguishable from other types of child restraints (i.e., child restraints suitable for aircraft). The unique appearance of belt-positioning seats should facilitate their identification by airline personnel.

III. Labeling Boosters for Children Weighing Not Less Than 30 Pounds

This rule adopts a labeling requirement to address the problem of booster seats being used for children too small for the restraints. This rule requires that, in labeling booster seats with their recommendations for the maximum and minimum weight and height of children who can safely occupy the seats (S5.5.2(f) and S5.5.5(f)), manufacturers must not recommend the seat for use by a child whose mass is less than 13.6 kilograms (30 pounds). No specific comments were received on the feasibility of developing a booster seat that would safely restrain children weighing less than 30 pounds.

Comments on the proposal were divided. Supporting the proposal were Volvo, Advocates for Highway and Auto Safety, UM–CPP, and the American Academy of Pediatrics (AAP). Advocates believed that if booster seats are permitted to cover a wide range of body weight and size, they become less appropriate at either end of the weight spectrum of recommended use. Further, Advocates said "merely stating a minimum figure of 30 pounds in the manufacturers' recommendations for the weight and height range of the restraint is not sufficient." It said the booster seats should also have a separate affirmative warning statement that the booster seat is not recommended for children who weigh less than 30 pounds.

AAP stated:

> While the Academy encourages NHTSA to be responsive and supportive of innovations in restraint technology, development of new products should be guided by a recognition of a child's requirements for protection at different stages of growth. What would be the low-weight end for such a product? We doubt that it is appropriate to approve a booster seat for children weighing less than 30 pounds, when these children can be more safely transported in standard car safety seats. Ten years ago, it was not uncommon for boosters seats to be available for children who weighed 20 pounds. Gradually, the industry shifted because of concern for protection of the younger children to where the low-weight end for boosters became 30 pounds. To drop below 30 pounds as the minimum weight for boosters, again, means to consider designs that provide for upper-trunk support, designs like the early Strolee booster seat that included a five-point harness and tether. Since it is unlikely that this design would find popular acceptance and use, a more reasonable course might be to explore the potential of integrated booster seats in motor vehicles for children weighing less than 30 pounds. To do this, however, requires attention to developing a lap/shoulder belt that can adjust to varying heights so that the fit is across the child's chest, not the child's face or neck.

Ford and Cosco opposed the proposal. Ford said that the vehicle manufacturer should have the flexibility to recommend use of a belt-positioning

(booster) seat, "even for some children under 30 pounds." Ford said, "A very thin child weighing less than 30 pounds may be too tall for a convertible child restraint, but an ideal candidate for a belt-positioning booster." Ford suggested that rather than base the prohibition on weight (30 pounds), NHTSA base it on height or age. Thus, Ford suggested that Standard 213 specify that no booster can be recommended for children of standing heights less than 900 mm (36 inches) or less than two years of age. Cosco believed that the prohibition against recommending a booster for children less than 13.6 kilograms (kg) is design restrictive:

> Surely it is possible that a booster seat meeting all requirements * * * could be developed either for children under 30 pounds or over 60 pounds in the future. Requiring a product to meet all the dynamic test requirements regardless of what weight is recommended should be sufficient.

NHTSA does not agree with Ford and Cosco that Standard 213 need not specify that boosters must not be recommended for children of less than 13.6 kg. NHTSA generally agrees with Cosco that dynamic test requirements should be *the* criteria in determining whether a given design performs adequately. However, in the case of booster seats, the dynamic test failed to prevent substandard restraining devices, with respect to protecting children at the extremes of the weight ranges recommended for the restraints (e.g., the 20 pound and the 48 pound child). As explained in the ANPRM preceding this rule, heretofore, manufacturers had great leeway in manufacturing booster seats and specifying which size (weight) children were suitable for the seats. That leeway resulted in alarming practices:

> Concerns about shield-type boosters arose from the recommendations by manufacturers about the size of children which could appropriately use a particular booster. Particular designs or models of boosters were typically recommended for a broad range of children. Often, the seats were recommended for use by children weighing from about 20 to 70 pounds. Such recommendations engendered concerns as to whether these boosters could provide adequate protection for children ranging from nine-month-old infants (average weigh 20 pounds) to six-year-old (48 pounds) and older children.
>
> 57 FR 22682, 22683; May 29, 1992.

As explained in the ANPRM, in tests conducted by NHTSA and by Calspan Corporation, it was found that shield boosters could not restrain a test dummy representing a 9-month-old child when dynamically tested using Standard 213's procedures. Yet, the boosters were certified as meeting Standard 213, because only the three-year-old (33 pound) child dummy is used to determine compliance with the standard. So tested, the restraints met Standard 213.

NHTSA agrees with the commenters that children with a mass of less than 13.6 kg are better protected in convertible and toddler seats. These child seats have been performing well when tested with the various sizes of dummies. However, booster seats have not performed adequately in restraining dummies with masses of less than 13.6 kg in tests done over the years at Calspan, the University of Michigan and VRTC. Moreover, the 9-month-old dummy in Part 572 that could be used to evaluate the effectiveness of booster seats in protecting children with masses less than 13.6 kg is not instrumented, and is therefore limited in its ability to provide a full and accurate indication of the safety of booster seats in protecting the very young child. Accordingly, the agency agrees with AAP that the proposed minimum weight limit for use of booster seats should be imposed until, and if, the state of the art of the technology evolves to design and develop a booster seat that would protect children with masses of less than 13.6 kg. However, the agency does not agree with Advocates that an affirmative warning label is appropriate. The label is ladened with warning statements, and adding to the label risks "information overload," which could reduce the effectiveness of each warning.

IV. Effective Date

This rule is effective in 30 days. An effective date of less than 180 days is justified because this rule relieves present requirements in Standard 213 that restrict the manufacture of belt-positioning booster seats. Moreover, the rule facilitates the manufacture of a booster seat that could provide safety benefits.

However, sections of Standard 213 adopted today that affect present labeling of shield booster seats and the printed instructions accompanying these seats are effective September 1, 1994. Those sections are S5.5.2(i)(2) and S5.6.1.9(a). Ford and Cosco pointed out that the NPRM included proposals on those sections that would affect how present booster seats are labeled, and how printed instructions now read. S5.5.2(i)(2) and S5.6.1.9(a) require that a booster seat be labeled with and provided with instructions on a warning to use the booster seat only with the vehicle's lap belt system, or with the shoulder belt portion of a Type II belt behind the child.[3] Ford and Cosco argued for a longer leadtime for these changes. NHTSA agrees that more leadtime is appropriate. The agency agrees with Cosco that more leadtime will help deplete supplies of existing labels (Cosco suggested three months is adequate), and concurs with Ford that more leadtime is warranted to change existing labels and printed instructions. (Ford suggested an effective date of September 1, 1994.) This rule makes the requirements affecting the labeling and printed instructions for shield boosters effective September 1, 1994.

With regard to belt-positioning seats, the labeling requirements adopted today do not change the way these child seats are labeled. Since belt-positioning seats cannot now meet Standard 213, there are no belt-positioning seats manufactured today for children under 50 pounds. The requirements only apply if manufacturers desire to produce such seats for children under 50 pounds.

V. Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. NHTSA has prepared a final regulatory evaluation for this action which discusses its potential costs, benefits and other impacts. A copy of that evaluation has been placed in the docket for this rulemaking action. Interested persons may obtain copies of the evaluation by writing to the docket section at the address provided at the beginning of this document.

To briefly summarize the evaluation, while the agency believes that belt-positioning seats will improve safety, the magnitude of that improvement is not known. Belt-positioning booster seats might be more acceptable to children than shield-type boosters. This could lead to increased usage rates for

[3] The commenters were particularly concerned about the proposal that would have required boosters to provide children's height and weight information in metric units of measurement. This rule does not adopt the proposal for metric units on the label. Further, while this rule adopts the proposal that child booster seats must not be recommended for children of masses of less than 13.6 kg (30 pounds), all child booster seats are now not recommended for children of masses less than 13.6 kg.

child restraint systems. Increased usage is important because child restraints are highly effective when used properly. Belt-positioning booster seats raise the child up in the vehicle seat, increasing the chances that the vehicle's shoulder belt would fit properly, and also that the lap belt will fit properly because it will be positioned lower on the child's hips.

NHTSA also concludes that this rule will result in negligible costs for testing labs and manufacturers of belt-positioning booster seats. The costs would result from testing and certifying belt-positioning seats. Manufacturers will be minimally affected by this rulemaking because it simply permits new designs in booster seats and does not require any design change or impose additional costs on manufacturers. Manufacturers that do not want to manufacture a belt-positioning booster seat will not be affected.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The agency knows of 14 manufacturers of child restraints, seven of which NHTSA considers to be small businesses (including Kolcraft, which with an estimated 500 employees, is on the borderline of being a small business).

Regardless of the number of small businesses, this rule will not have a significant economic impact on these entities. The rule would affect manufacturers only if they choose to manufacture a new type of booster seat. The amendment could benefit manufacturers by allowing them to manufacture and sell a new product. However, the agency does not know how interested manufacturers are in belt-positioning child seats, and even if they were interested, the extent to which consumers would purchase the product.

Small organizations and governmental jurisdictions procure child restraint systems for programs such as loaner programs. However, only a small percentage of loaner programs carry booster seats. In any event, NHTSA believes that any small impact on price, either positive or negative, will not have a substantial impact on these loaner programs. Thus, these entities would not be significantly affected by this rule.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Incorporation by reference.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

1. The authority citation for Part 571 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.213 is amended by:

a. Adding to S4, in alphabetical order, definitions of "backless child restraint system" and "belt-positioning seat," and revising in S4 the definition of "booster seat;"

b. Revising—

1. S5.3.2,

2. the introductory paragraph of S5.5.2(f),

3. S5.5.2(n),

4. S5.5.4,

5. the introductory paragraph of S5.5.5, and

6. the introductory paragraph of S5.5.5(f);

c. Adding S5.5.2(i), S5.5.5(l), S5.6.1.9(a), (b) and (c), and S5.6.4; and

d. Revising S6.1.1.3, S6.1.2.1.1(a), S6.1.2.1.2(a), S6.1.2.2, S6.1.2.4, and S7.3(a)(1).

The revised and added paragraphs read as follows:

§ 571.213 Standard No. 213, Child Restraint Systems.

* * * * *

Backless child restraint system means a child restraint, other than a belt-positioning seat, that consists of a seating platform that does not extend up to provide a cushion for the child's back or head and has a structural element designed to restrain forward motion of the child's torso in a forward impact.

Belt-positioning seat means a child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in a forward impact.

Booster seat means either a backless child restraint system or a belt-positioning seat.

* * * * *

S5.3.2 When installed on a vehicle seat, each add-on child restraint system, other than child harnesses and belt-positioning seats, shall be capable of being restrained against forward movement solely by means of a Type I seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208), or by means of a Type I seat belt assembly plus one additional anchorage strap that is supplied with the system and conforms to S5.4. Each belt-positioning seat shall be capable of being restrained against forward movement solely by means of a Type II seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208).

* * * * *

S5.5.2 * * *

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and height of children who can safely occupy the system, except that booster seats shall not be recommended for children of masses of less than 13.6 kg:

* * * * *

(i)(1) Except for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assembly, and except for a backless child restraint system manufactured before September 1, 1994, one of the following statements, as appropriate:

(i) WARNING! USE ONLY THE VEHICLE'S LAP AND SHOULDER

BELT SYSTEM WHEN RESTRAINING THE CHILD IN THIS BOOSTER SEAT; or,

(ii) WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD IN THIS SEAT.

(2) For a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies, the following statement:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*, AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above description*.

* * * * *

(n) Child restraint systems, other than belt-positioning seats, that are certified as complying with the provisions of section S8 shall be labeled with the statement "This Restraint is Certified for Use in Motor Vehicles and Aircraft." Belt-positioning seats shall be labeled with the statement "This Restraint is Not Certified for Use in Aircraft." The statement required by this paragraph shall be in red lettering and shall be placed after the certification statement required by paragraph (e) of this section.

* * * * *

S5.5.4 (a) Each built-in child restraint system other than a factory-installed built-in restraint shall be permanently labeled with the information specified in S5.5.5 (a) through (l). The information specified in S5.5.5(a) through (j) and in S5.5.5(l) shall be visible when the system is activated for use.

(b) Each factory-installed built-in child restraint shall be permanently labeled with the information specified in S5.5.5(f) through (j) and S5.5.5(l), so that the information is visible when the restraint is activated for use. The information shall also be included in the vehicle owner's manual.

S5.5.5 The information specified in paragraphs (a) through (l) of this section that is required by S5.5.4 shall be in English and lettered in letters and numbers that are not smaller than 10-point type and are on a contrasting background.

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and height of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg:

* * * * *

(l) In the case of a built-in belt-positioning seat that uses either the vehicle's Type I or Type II belt systems or both, a statement describing the manufacturer's recommendations for the maximum height and weight of children who can safely occupy the system and how the booster should be used (e.g., with or without shield) with the different vehicle belt systems.

* * * * *

S5.6.1.9

* * * * *

(a) Except for instructions for a booster seat that is recommended for use with both a vehicle's Type I and Type II seat belt assembly, and except for instructions for a backless child restraint system manufactured before September 1, 1994, the instructions shall include one of the following statements, as appropriate, and the reasons for the statement:

(1) WARNING! USE ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN RESTRAINING THE CHILD IN THIS BOOSTER SEAT; or,

(2) WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD IN THIS SEAT.

(b) The instructions for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies shall include the following statement and the reasons therefor:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*, AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above description*.

(c) The instructions for belt-positioning seats shall include the statement, "This restraint is not certified for aircraft use," and the reasons for this statement.

* * * * *

S5.6.4 In the case of a built-in belt-positioning seat that uses either the vehicle's Type I or Type II belt systems or both, the instructions shall include a statement describing the manufacturer's recommendations for the maximum height and weight of children who can safely occupy the system and how the booster must be used with the vehicle belt systems appropriate for the booster seat. The instructions shall explain the consequences of not following the directions. The instructions shall specify that, if the booster seat is recommended for use with only the lap-belt part of a Type II assembly, the shoulder belt portion of the assembly must be placed behind the child.

* * * * *

S6.1.1.3 Attached to the seat belt anchorage points provided on the standard seat assembly (illustrated in Figures 1A and 1B) are Type 1 seat belt assemblies in the case of add-on child restraint systems other than belt-positioning seats, or Type 2 seat belt assemblies in the case of belt-positioning seats. These seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 2 inches, and are attached to the anchorage points without the use of retractors or reels of any kind.

* * * * *

S6.1.2.1.1 *Test configuration I.*

(a) In the case of each add-on child restraint system other than a belt-positioning seat, a child harness, a backless child restraint system with a top anchorage strap, or a restraint designed for use by physically handicapped children, install the add-on child restraint system at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the add-on restraint shall be secured to the standard vehicle seat using only the standard vehicle lap belt. A child harness, a backless child restraint system with a top anchorage strap, or a restraint designed for use by physically handicapped children shall be installed at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1. An add-on belt-positioning seat shall be installed at either outboard seating position of the

standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the belt-positioning seat shall be secured to the standard vehicle seat using only the standard vehicle lap and shoulder belt.

* * * * *

S6.1.2.1.2 *Test configuration II.*

(a) In the case of each add-on child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a backless child restraint system with a top anchorage strap, install the add-on child restraint system at the center seating position of the standard seat assembly using only the standard seat lap belt to secure the system to the standard seat.

* * * * *

S6.1.2.2 Tighten all belts used to restrain the add-on child restraint to the standard test seat assembly and all belts used to directly restrain the dummy to the add-on or built-in child restraint according to the following:

(a) Tighten all Type 1 belt systems and any provided additional anchorage belt (tether), that are used to attach the add-on child restraint to the standard seat assembly to a tension of not less than 53.5 newtons and not more than 67 newtons, as measured by a load cell used on the webbing portion of the belt.

(b) Tighten the lap portion of Type 2 belt systems used to attach the add-on child restraint to the standard seat assembly to a tension of not less than 53.5 newtons and not more than 67 newtons, as measured by a load cell used on the webbing portion of the belt.

(c) Tighten the shoulder portion of Type 2 belt system used to directly restrain the dummy in add-on and built-in child restraint systems as specified in S11.9, *Manual belt adjustment for dynamic testing.*

* * * * *

S6.1.2.4 If provided, shoulder (other than the shoulder portion of a Type 2 vehicle belt system) and pelvic belts that directly restrain the dummy in add-on and built-in child restraint systems shall be adjusted as follows: Tighten the belts until a 9-newton force applied (as illustrated in Figure 5) to the webbing at the top of each dummy shoulder and to the pelvic webbing 50 millimeters on either side of the torso midsagittal plane pulls the webbing 7 millimeters from the dummy.

S7.3 *Standard test devices.*

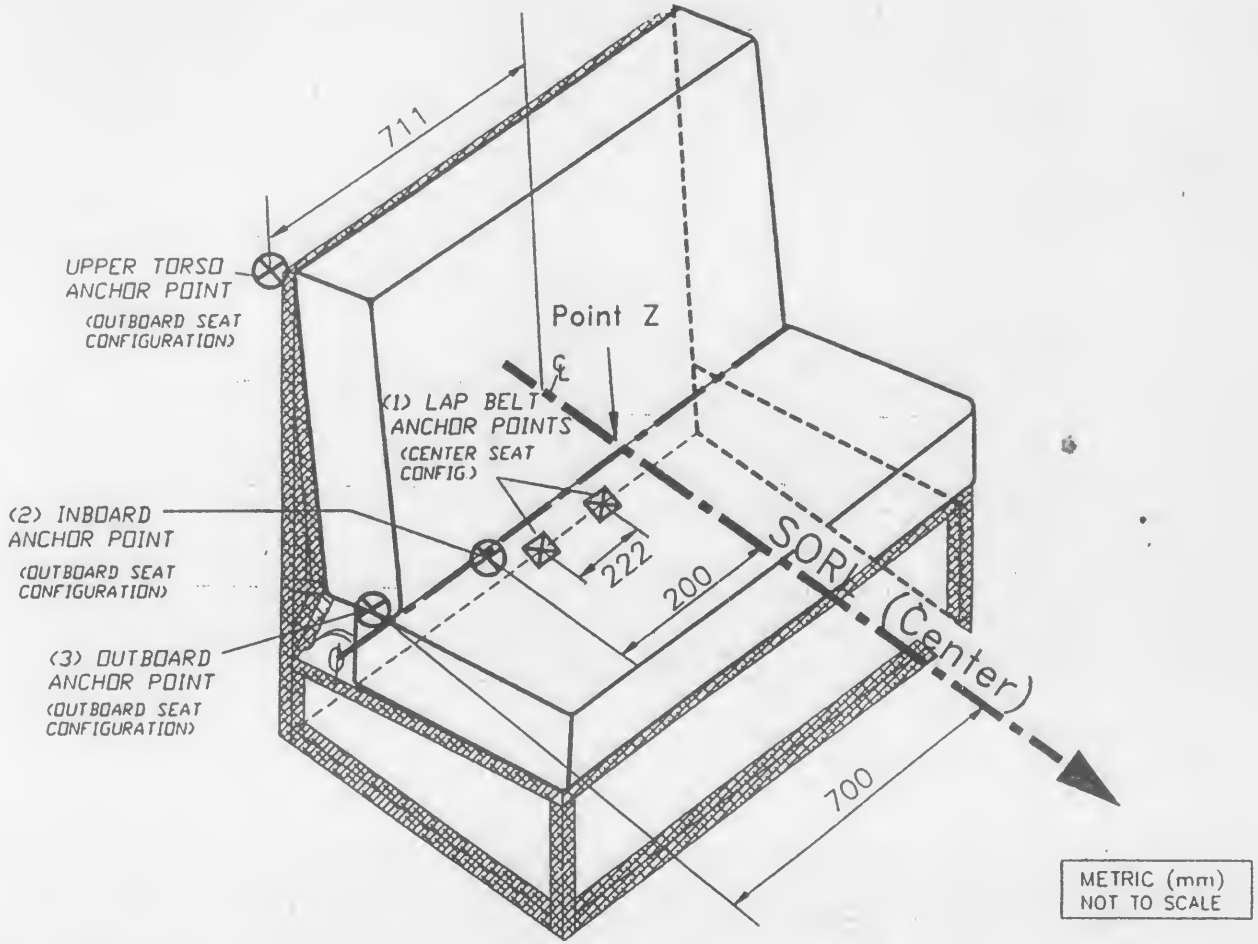
(a) * * *

(1) For testing for motor vehicle use, a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in NHTSA's Office of Vehicle Safety Standard's Drawing Package SAS–100–1000 (consisting of drawings and a bill of materials) with Addendum A, Seat Base Weldment, dated July 1, 1993 (incorporated by reference; see § 571.5).

* * * * *

3. Figures 1A and 1B at the end of section 571.213 are revised to read as follows:

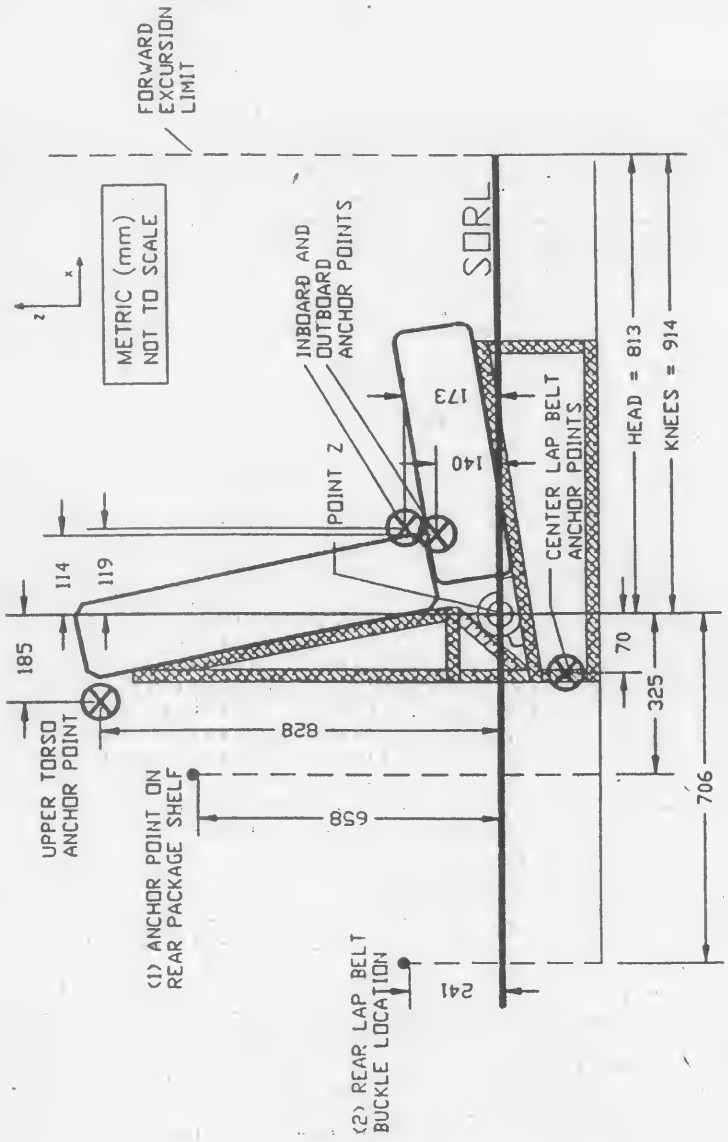
BILLING CODE 4910-59-P



NOTES:
(1) Lap Belt Anchor Points are Symmetrically Located with Respect to the Center SORL
(2) Maximum Distance from the Seat Bight to the end of the Buckle is 175 mm
(3) Outboard Anchor Point Located 700 mm from the Center SORL

SEAT ORIENTATION REFERENCE LINE AND BELT ANCHORAGE POINTS LOCATIONS ON THE STANDARD SEAT ASSEMBLY

Figure 1A



NOTES:
(1) Anchor Point on Rear Package Shelf Located 544 mm Right or Left of the Center SORL as shown in Fig. 1A
(2) Rear Lap Belt Buckle Located 178 mm Right or Left of the Center SORL as shown in Fig. 1A

LOCATIONS OF BELT ANCHORAGE POINTS AND FORWARD EXCURSION LIMIT ON THE STANDARD SEAT ASSEMBLY

Figure 1B

BILLING CODE 4910-59-C

Issued on July 15, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–17683 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 071594A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 (between 154° and 159° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 15, 1994, until 12 noon, A.l.t., October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 62 is 7,806 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv). The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that this third quarterly allowance soon will be reached. The Regional Director has established a directed fishing allowance of 7,300 mt, and has set aside the remaining 506 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 62 is prohibited, effective from 12 noon, A.l.t., July 15, 1994, until 12 noon, A.l.t., October 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17707 Filed 7–15–94; 4:31 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 931199–4042; I.D. 071494A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the northern rockfish total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 15, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Central Regulatory Area was established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 4,720 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), established in accordance with § 672.20(c)(2)(ii), a directed fishing allowance for northern rockfish of 4,320 mt, with consideration that 400 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area effective from 12 noon, A.l.t., July 14, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17708 Filed 7–15–94; 4:31 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 931199–4042; I.D. 071594B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 63 (between 147° and 154° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 15, 1994, until 12 noon, A.l.t., October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 63 is 10,937 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv). The Director, Alaska Region, NMFS

(Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that this third quarterly allowance soon will be reached. The Regional Director has established a directed fishing allowance of 10,200 mt, and has set aside the remaining 737 mt as bycatch to support other anticipated groundfish fisheries.

The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 63 is prohibited, effective from 12 noon, A.l.t., July 15, 1994, until 12 noon, A.l.t., October 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17709 Filed 7–15–94; 4:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 139
Thursday, July 21, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–84–AD]

Airworthiness Directives; Aerospatiale Model ATR42–300 and –320 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 Aerospatiale Model ATR42 series airplanes. This proposal would require an inspection to determine the model and orientation of certain flight control rods, and replacement with modified rods, if necessary. This proposal is prompted by reports of corrosion found on the pitch trim and rudder trim rods. The actions specified by the proposed AD are intended to prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items.

DATES: Comments must be received by September 19, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1100.

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–84–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–84–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 Aerospatiale Model ATR42 series airplanes. The DGAC advises that corrosion has been detected on the pitch and rudder trim fail-safe rods installed on these airplanes. (This corrosion was found during inspections that were conducted as a part of a sampling program carried out by the manufacturer.) In some cases, corrosion apparently was caused by water accumulating in the lower part of the rods and freezing; the rods in these cases were installed with their open end oriented upwards (rather than downwards), which allowed water to accumulate between the internal and external tubes of the rod. Some cracking was associated with corrosion in these cases. Such corrosion could compromise the required strength of these flight control rods.

Aerospatiale has issued the following service bulletins which address the identified problems:

a. Service Bulletin ATR42–27–0071, dated February 23, 1994, describes procedures for inspecting the elevator trim rod and rudder trim rod to determine the orientation of the open rod end. It also describes procedures for replacing rods having open ends that are oriented upwards with rods on which the open end of the rod is oriented downwards. A downward-oriented rod end will prevent the accumulation of water between the internal and external tubes of the rod. The DGAC classified the material contained in this service bulletin as mandatory and issued French Airworthiness Directive 94–003–053(B), dated January 5, 1994, in order to assure the continued airworthiness of these airplanes in France.

b. Service Bulletin ATR42–27–0048, Revision 2, dated May 16, 1991, describes procedures for reversing the installation of the ends of the elevator tab and rudder tab control rods so that the open end of the rod is oriented downwards. The DGAC has classified this service bulletin as "recommended."

c. Service Bulletin ATR42–27–0049, Revision 2, dated May 16, 1991, describes procedures for replacing the elevator tab and rudder tab control rods with new rods that have been modified by the addition of a drain hole in the non-open end of the rod and the application of a protective treatment. The DGAC has classified this service bulletin as "recommended."

This airplane model is manufactured in France 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 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 an inspection to determine the orientation of the end of rudder trim and elevator trim fail-safe rods, and replacement of those rods having downwards-oriented ends. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Airplanes on which Aerospatiale Modification 02723 has been installed are not affected by the requirements of this proposed AD. The subject flight control rods on those airplanes have been modified prior to airplane delivery.

The FAA estimates that 128 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hour per airplane to accomplish the proposed inspection action, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $28,160, or $220 per airplane. This total cost impact figure 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.

Should replacement of any of the flight control rods be necessary, the number of work hours and the cost of required parts would vary according to the type of replacement accomplished. In a "worst case scenario" (both subject rods needing replacement), the cost of parts would be approximately $6,000 per airplane. Labor necessary to accomplish replacement of a rod(s) would vary from 54 work hours to 87 work hours, at an average labor rate of $55 per work hour.

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:

Aerospatiale: Docket 94–NM–84–AD.

Applicability: Model ATR42–300 and –320 series airplanes on which Aerospatiale Modification 02723 has not been installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items, accomplish the following:

(a) Within 18 months after the effective date of this AD, visually inspect the elevator trim and rudder trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Aerospatiale Service Bulletin ATR42–27–0071, dated February 23, 1994.

(1) If a SARMA-type rod is installed at either of these locations, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR42–27–0049, Revision 2, dated May 16, 1991.

(2) If a TAC-type rod is installed at either of these locations, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR42–27–0048, Revision 2, dated May 16, 1994.

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

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

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

Issued in Renton, Washington, on July 15, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17763 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–62–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–30 and –30F 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 McDonnell Douglas Model DC–10–30 and –30F series airplanes. This proposal would require replacement of cargo door latch spool fitting attach bolts fabricated from H–11 steel with Inconel bolts. This proposal is prompted by a report of a broken latch spool fitting attach bolt found on a cargo door on a Model DC–9 series freighter airplane. The actions specified by the proposed AD are intended to prevent inadvertent opening of a cargo door while the airplane is in flight, and subsequent loss of pressurization and reduced controllability of the airplane

DATES: Comments must be received by October 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–62–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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. LS1, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

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–62–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–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 26, 1991, the FAA issued AD 91–10–07, amendment 39–6991 (56 FR 21268), applicable to McDonnell Douglas Model DC–10 series airplanes, manufacturer's fuselage numbers 1 through 379 inclusive. That AD requires inspection of the cargo door latch spool fitting attach bolts fabricated from H–11 steel and replacement of those bolts with Inconel bolts. That action was prompted by a report of a broken latch spool fitting attach bolt found on a cargo door on a Model DC–9 series freighter airplane. Broken bolts could jeopardize the integrity of the door locking capability. The requirements of AD 91–10–07 are intended to prevent loss of pressurization and reduced controllability of the aircraft due to inadvertent opening of a cargo door while the airplane is in flight.

Since the issuance of AD 91–10–07, the manufacturer has informed the FAA that cargo door latch spool fitting attach bolts fabricated from H–11 steel also were installed on 8 additional Model DC–10 production airplanes. Therefore, these 8 airplanes are subject to the same unsafe condition as addressed by that AD.

The FAA has reviewed and approved McDonnell Douglas DC–10 Alert Service Bulletin A52–212, Revision 4, dated November 3, 1993, that describes procedures for replacement of the H–11 cargo door latch spool fitting attach bolts and associated hardware with Inconel bolts and associated hardware. Replacing the existing H–11 material bolts and associated hardware with new bolts made from Inconel material and associated hardware will eliminate the possibility of stress corrosion failures.

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 H–11 cargo door latch spool fitting attach bolts with Inconel bolts on 8 Model DC–10–30 and –30F series airplanes. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Note: The FAA's normal policy is that, when an AD requires a substantive change, such as a change in its applicability, the "old" AD is superseded by being removed from the system and a new AD added. In the case of this AD action, the FAA normally would have proposed superseding AD 91–10–07 to expand its applicability to include the 8 additional airplanes. However, in reconsideration of the entire fleet size that would be affected by such a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the 8 airplanes. This AD does not supersede AD 91–10–07; airplanes listed in the applicability of AD 91–10–07 continue to be required to comply with the requirements of that AD. This proposed AD is a separate AD action, and would be applicable only to eight airplanes listed in the alert service bulletin described above.

There are 8 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 86 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $10,682 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $92,472, or $15,412 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:

McDonnell Douglas: 94–NM–62–AD.

Applicability: Model DC–10–30 and –30F series airplanes having fuselage numbers 409, 412, 416, 419, 422, 433, 434, and 435; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of a cargo door while the airplane is in flight, and subsequent loss of pressurization and reduced controllability of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, replace all H–11 cargo door latch spool fitting attach bolts with Inconel bolts, in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A52–212, Revision 4, dated November 3, 1993.

(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 2: 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 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 July 15, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17765 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–SW–05–AD]

Airworthiness Directives: McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369 and OH–6A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369 and OH–6A series helicopters equipped with certain main rotor (M/R) blade assemblies or certain M/R hub lead-lag assemblies, that currently requires repetitive inspections and checks for cracks. This action would require the same inspections as the superseded AD, but would eliminate pilot checks, expand the areas of inspection, and require the application of slippage marks on each M/R blade root fitting lug and related bushings to detect movement. This proposal is prompted by additional reports of cracks in the M/R blade root fittings, lugs, and adjacent blade skin, and movement of the root fitting bushings. The actions specified by the proposed AD are intended to prevent failure of a M/R blade assembly or a M/R hub lead-lag link assembly, loss of a M/R blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received by September 6, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137–4298. 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 McDonnell Douglas Helicopter Company, Technical Publications, Bldg 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425, telephone (310) 988–5237, fax (310) 988–5210.

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 should 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–SW–05–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, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137–4298.

Discussion

On August 8, 1991, the FAA issued AD 91–17–04, Amendment 39–8003 (56 FR 42230, August 27, 1991), to require initial and repetitive inspections and checks of certain main rotor (M/R) blade assemblies and M/R hub lead-lag link assemblies for fatigue cracks and for

loose bushings in the M/R blade lead-lag link lugs (lead-lag lugs). That action was prompted by two incidents involving a cracked M/R blade root fitting lug (root fitting lug). Bushing movement in the M/R blade lead-lag link lugs may have caused fatigue cracks in the lead lag link assemblies. The lead lag link assembly attaches to the M/R blade. Any cracks in the lead lag link assembly, the M/R blade, the MR blade root fitting, or any movement of the bushing, could create an unsafe condition. That condition, if not corrected, could result in failure of a M/R blade assembly or a M/R hub lead-lag link assembly, loss of a M/R blade, and subsequent loss of control of the helicopter.

Since the issuance of that AD, additional incidents of cracks in the M/R blade root fitting (root fitting), and M/R blade skin have been reported. Additionally, the manufacturer has discovered that in some M/R blade assemblies, the M/R blade root fitting bushing (bushing) can loosen and contribute to fretting-induced fatigue cracking in the root fitting lug. The root fittings and M/R blade skins are parts of the M/R blade assembly. Therefore, McDonnell Douglas Helicopter Company issued a revised Service Information Notice No. HN–211.4, DN–51.6, EN–42.4, and FN–31.4 (SIN), dated January 27, 1993, that requested operators mark each root fitting lug and bushing with a slippage mark and thereafter inspect for slippage on each root fitting lug and bushing. The revised SIN, dated January 27, 1993, includes the M/R blade assembly and M/R hub lead-lag link assembly inspections contained in the preceding versions of the SIN, dated August 5, 1991.

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 supersede AD 91–17–04 to require application of a slippage mark on each root fitting lug and bushing within 25 hours' time-in-service (TIS). In addition, this proposal would require, within 25 hours' TIS after the effective date of this AD and thereafter at intervals not to exceed 100 hours' TIS, that the M/R blade assembly be removed and that the root fittings, root fitting lugs, lead-lag lugs, the M/R blade skin, and the doublers adjacent to the root fitting be inspected for cracks. This AD proposal also requires that the bushings be inspected for looseness and slippage, and that slippage marks be applied if not already present. Visual inspections of the exposed M/R blade skin, root fittings, root fitting lugs, and lead-lag lugs for cracks and inspection of the bushing slippage marks for movement are also required at intervals not to exceed 25 hours' TIS. The FAA no longer allows pilots to perform checks such as those contained in AD 91–17–04, paragraph (b). Therefore, a pilot would not be permitted to perform any of the proposed inspections in this AD.

The FAA estimates that 1,000 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be § 1,210,000.

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 removing Amendment 39–8003 (56 FR 42230, August 27, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Mcdonnell Douglas Helicopter Company and Hughes Helicopters, Inc.: Docket No. 94–SW–05–AD. Supersedes AD 91–17–04, Amendment 39–8003.

Applicability: Model 369 and OH–6A series helicopters, certificated in any category, equipped with any of the following parts: (1) Main rotor blade assembly (blade assembly), part number (P/N) 369A1100–BSC, –501, –503, –505, –601, or –603; 369D21100–BSC, –503, –505, –507, –509, –511, –513, or –515; 369D21102–BSC or –501; or

(2) Main rotor hub lead-lag link assembly (lead-lag link assembly), P/N 369A1203–BSC, –3, or –11; 369H1203–BSC, –11, –21, or –31.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of a main rotor blade assembly or a main rotor hub lead-lag link assembly, loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours' time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' TIS from the last inspection, remove each blade assembly from the helicopter and accomplish the following:

(1) Inspect the attachment lugs of the main rotor (M/R) blade root fittings (root fittings) and the M/R lead-lag links (links) for cracks and the lug bushings (bushings) for looseness. Conduct the inspections in accordance with paragraph (b) of Part I of McDonnell Douglas Helicopter Company Service Information Notice HN–211.4, DN–51.6, EN–42.4, FN–31.4 (SIN), dated January 27, 1993.

(2) Visually inspect for cracks—

(i) The root fittings around the blade attachment lugs, and

(ii) The M/R blade doubler and blade skin adjacent to the root fittings.

(3) Mark the root fittings and bushings with slippage marks in accordance with paragraph (e) of Part I of the SIN, dated January 27, 1993, if the slippage marks are degraded or missing.

(4) Replace any M/R blades or links found to be cracked or to have loose bushings with airworthy parts before further flight.

(b) Within 25 hours' TIS after compliance with the requirements of paragraph (a) of this AD, and thereafter at intervals not to exceed 25 hours' TIS from the last inspection, accomplish the following without removing the M/R blade:

(1) Visually inspect the root fittings and links for cracks or loose bushings in accordance with Part II of the SIN, dated January 27, 1993.

(2) Replace any M/R blades or links found to be cracked or to have loose bushings with airworthy parts before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los

Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

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

Issued in Fort Worth, Texas, on June 14, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–17797 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–60]

Proposed Establishment of Class E Airspace: Alta Vista Ranch Airport, Marfa, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Alta Vista Ranch Airport, Marfa, TX. The development of a very high frequency omni-directional range (VOR) standard instrument approach procedure (SIAP) to Runway (RWY) 15 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR RWY 15 SIAP at Alta Vista Ranch Airport, Marfa, TX.

DATES: Comments must be received on or before September 1, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–60, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–60." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistance Chief Counsel, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL, at Alta Vista Ranch Airport, Marfa, TX. The development of a VOR RWY 15 SIAP has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the VOR RWY 15 SIAP at Alta Vista Ranch Airport, Marfa, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference on 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–

1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

* * * * *

ASW TX E5 Marfa, Alta Vista Ranch Airport, TX [New]

Marfa, Alta Vista Ranch Airport, TX
(Lat. 30°08'54" N., Long. 103°53'35" W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Alta Vista Ranch Airport.

* * * * *

Issued in Fort Worth, TX, on July 5, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–17799 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 93–AWP–8]

Proposed Modification of Restricted Areas R–2303A and R–2303B, and Establishment of R–2303C, Fort Huachuca, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Restricted Areas R–2303A and R–2303B, and establish R–2303C at Fort Huachuca, AZ. R–2303A would be amended to exclude the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport from the restricted area and provide airspace for visual flight rules (VFR) access to the airport when R–2303A is in use. The proposal would lower the floor and ceiling and revise the lateral dimensions of R–2303B in order to accommodate unmanned aerial vehicle training profiles. R–2303B would be further subdivided by redesignating the southeast corner of the existing area as a separate restricted area, R–2303C. Additionally this notice proposes to reduce the published hours of operation for R–2303A and R–2303B. As proposed, the time of designation for the new area, R–2303C, would be intermittent by a Notice to Airmen (NOTAM). These changes are proposed to accommodate increased training requirements and to return unneeded special use airspace to the National Airspace System (NAS).

DATES: Comments must be received on or before August 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500 Docket No. 93–AWP–8, Federal Aviation Administration, P. O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

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

FOR FURTHER INFORMATION CONTACT: James R. Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWP–8." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: Commander, U.S. Army Garrison, Attn: Mr. John Murray ATZS-EHB, Fort Huachuca, AZ 85613–6000. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to amend R–2303A to exclude from the restricted area the airspace from the surface to 1,500 feet above ground level (AGL), within a 3-nautical-mile radius of the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport. The airspace from the surface to 1,500 feet AGL within 1-nautical-mile either side of U.S. Highway 90 would also be excluded. This would provide VFR access to the airport when R–2303A is in use. R–2303B would be amended by relocating the northern boundary 3 miles south of its existing position. This would better accommodate hang gliding activity that takes place just outside of the northwest corner of existing R–2303B. R–2303B would also be subdivided to designate the southeastern section as a separate restricted area, R–2303C. This notice also proposes to lower the floor of R–2303B from 15,000 feet MSL to 8,000 feet MSL in order to accommodate unmanned aerial vehicle training profiles. The ceiling of R–2303B would be lowered from FL 450 to FL 300. This new subarea would extend from 8,000 feet mean sea level (MSL) to FL 300. The U.S. Army has determined that there is no longer a requirement for restricted airspace above FL 300, therefore, that airspace would be returned to the NAS. Lastly, the times of designation for R–2303A and R–2303B would be reduced from "Monday-Saturday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance," to "Monday-Friday, 0700–1600 local time; other times by

NOTAM at least 24 hours in advance." Activation of R–2303C would be intermittent by NOTAM at least 24 hours in advance. Designation of R–2303C is proposed to accommodate hang gliding activities that occur just outside of the southeastern corner of existing R–2303B. The coordinates for this airspace docket are based on North American Datum 83. Section 73.23 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

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

Environmental Review

An environmental review of the proposal will be conducted by the U.S. Army and the FAA prior to an FAA final decision on the proposal. The results of the review will be addressed in any subsequent rulemaking action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 73.23 is amended as follows:

§ 73.23 [Amended]

R–2303A Fort Huachuca, AZ [Revised]

Boundaries. Beginning at lat. 31°40'40" N., long. 110°11'02" W.;
To lat. 31°34'00" N., long. 110°08'32" W.;
To lat. 31°34'00" N., long. 110°22'02" W.;
To lat. 31°33'00" N., long. 110°23'02" W.;
To lat. 31°29'00" N., long. 110°23'02" W.;
To lat. 31°29'00" N., long. 110°41'32" W.;
To lat. 31°34'00" N., long. 110°43'32" W.;
To lat. 31°38'30" N., long. 110°42'02" W.;
To lat. 31°38'30" N., long. 110°39'32" W.;
To lat. 31°41'00" N., long. 110°33'32" W.;
To lat. 31°41'00" N., long. 110°12'02" W.;
To the point of beginning.

Altitudes. Surface to 15,000 feet MSL, excluding the airspace from the surface to 1,500 feet AGL within a 3-nautical-mile radius of the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport, AZ, and excluding the airspace from the surface to 1,500 feet AGL within 1-nautical-mile either side of U.S. Highway 90.

Time of designation. Monday-Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

R–2303B Fort Huachuca, AZ [Revised]

Boundaries. Beginning at lat. 31°45'00" N., long. 110°20'02" W.;
To lat. 31°41'00" N., long. 110°12'02" W.;
To lat. 31°40'40" N., long. 110°11'02" W.;
To lat. 31°34'00" N., long. 110°08'32" W.;
To lat. 31°34'00" N., long. 110°22'02" W.;
To lat. 31°33'00" N., long. 110°23'02" W.;
To lat. 31°29'00" N., long. 110°23'02" W.;
To lat. 31°29'00" N., long. 110°25'02" W.;
To lat. 31°24'00" N., long. 110°25'02" W.;
To lat. 31°24'00" N., long. 110°45'02" W.;
To lat. 31°45'00" N., long. 110°45'52" W.;
To the point of beginning.

Altitudes. 8,000 feet MSL to FL 300.

Time of designation. Monday-Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

R–2303C Fort Huachuca, AZ [New]

Boundaries. Beginning at lat. 31°35'00" N., long. 110°00'02" W.;
To lat. 31°24'00" N., long. 110°00'02" W.;
To lat. 31°24'00" N., long. 110°25'02" W.;
To lat. 31°29'00" N., long. 110°25'02" W.;
To lat. 31°29'00" N., long. 110°23'02" W.;
To lat. 31°33'00" N., long. 110°23'02" W.;
To lat. 31°34'00" N., long. 110°22'02" W.;
To lat. 31°34'00" N., long. 110°08'32" W.;
To lat. 31°40'40" N., long. 110°11'02" W.;
To the point of beginning.

Altitudes. 15,000 feet MSL to FL 300.

Time of designation. Intermittent by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

Issued in Washington, DC, on July 8, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–17800 Filed 7–20–94, 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Proposed Amendments to Commodity Pool Operator and Commodity Trading Advisor Disclosure Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On May 16, 1994, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on proposed rules to extensively revise the Commission's part 4 disclosure rules applicable to commodity pool operators and commodity trading advisors. The original comment period expires on July 15, 1994. 59 FR 25351 (May 16, 1994). By letter dated July 11, 1994, the Managed Futures Association requested an extension of the comment period to August 17, 1994. In order to ensure that all interested parties have an adequate opportunity to submit meaningful comments, the Commission has determined to extend the comment period as requested.

DATES: Written comments must be received on or before August 17, 1994.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT:

Susan C. Ervin, Deputy Director/Chief Counsel or Barbara Stern Gold, Assistant Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, DC, on July 14, 1994, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–17696 Filed 7–20–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N–0155]

RIN 0905–AB68

Food Labeling; Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Guidelines for Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of July 18, 1994 (59 FR 36379). The document proposed to revise the guidelines for voluntary nutrition labeling of raw fruit, vegetables, and fish; revise the definition for compliance with respect to adherence by retailers to those guidelines; and revise the labeling values for the 20 most frequently consumed raw fruit, vegetables, and fish. Certain portions of section VII. C and section VIII. in the Supplementary Information section were inadvertently omitted from the document. This document corrects that error.

DATES: Submit written comments by September 16, 1994. The agency is proposing that any final rule that may issue based on this proposal became effective 30 days after publication.

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

FOR FURTHER INFORMATION CONTACT: Jean A. T. Pennington, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5434.

In FR Doc. 94–17287, appearing on page 36379, in the Federal Register of July 18, 1994, the following correction is made:

1. On page 36388, in the 1st column, in section VII.C., in line 16, the following text is added after the word "existing" and before the word "with" to read as follows:

* * * signs normally would have been replaced during the compliance period. However, FDA does not believe that signs normally would have been redesigned during that period. Therefore, the costs of the proposed regulation are administrative and redesign costs. FDA estimates that the average cost of redesigning signs to label raw fruits, vegetables, and fish is $100 per store. There are 31,000 chain stores and 68,000 independent grocery stores that fall under the compliance guidelines. Therefore, if those stores currently complying with the guidelines continue to do so, costs of compliance would be approximately $7.5 million.

VIII. Effective Date

FDA is proposing that final regulations and voluntary guidelines based on this proposal become effective 30 days after publication in the Federal Register. Under the act, FDA is scheduled to do a compliance survey every 2 years. The first survey was conducted in November and December of 1992, and the second is scheduled for the fall of 1994. While FDA would like to have the new values in place by the fall, the agency recognizes that it is unlikely that it will be able to do so. Even if the agency were to complete this rulemaking by that time, FDA recognizes that it will be very difficult for firms to have signs in place that reflect the new values by the time of the survey. Therefore, FDA advises that regardless of whether it completes this rulemaking by the fall or not, it intends to find a store to be in compliance if it is providing nutrition information for raw fruits, vegetables, and fish in accordance * * *.

Dated: July 19, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17845 Filed 7–19–94; 12:10 pm]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards Concerning Physical Mailpiece Dimensions, Addressing, and Address Placement

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the Federal Register (59 FR 31178–31183) on June 17, 1994, a proposal to amend the Domestic Mail Manual concerning standards defining a mailpiece's dimensions and relating them to processing category and other criteria, as well as standards concerning the content and placement of delivery and return addresses; the location of, and the use of a ZIP Code or ZIP+4 code in, the return address on certain mail; terms related to post office boxes and standards for their use in addressing mail; and the prohibition of dual addresses on certain types of mail. The Postal Service requested comments by August 1, 1994. Owing to the needs of the mailing public, from whom several requests for additional time were received, the Postal Service is extending the comment period to September 16, 1994.

DATES: Comments on the proposed rule must be received on or before September 16, 1994.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–2419. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 5610 at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–17781 Filed 7–20–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[M118–01–5767, M121–01–6241; AMS–FRL–5014–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve revisions to the Michigan State Implementation Plan (SIP) for attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone. These revisions pertain to the Detroit-Ann Arbor moderate ozone nonattainment area which includes the following counties: Livingston, Macomb, Monroe, Oakland, Saint Clair, Washtenaw, and Wayne. The revisions being proposed for approval are the 1990 base year emission inventory, basic vehicle inspection and maintenance (I/M), and redesignation of the Detroit-Ann Arbor area to attainment for ozone and corresponding 175A maintenance plan.

DATES: Comments on these proposed actions must be received in writing by August 22, 1994 and will be considered before taking final action on these SIP revisions.

ADDRESSES: Written comments should be sent to Carlton T. Nash, Chief,

Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of these SIP revisions and USEPA's analyses are available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6081. Anyone wishing to come to Region 5 offices should contact Jacqueline Nwia first.

SUPPLEMENTARY INFORMATION: This document contains a number of submittals for which the USEPA is proposing action. For purposes of clarity, the following Table of Contents is provided as a guide for this action.

Table of Contents

A. Emissions Inventory

The inventory was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area ozone SIP for the Detroit/Ann Arbor area in Michigan.

A detailed analysis of Michigan's 1990 Base Year Emission Inventory SIP submittal is contained in the USEPA's technical support document (TSD), dated January 27, 1994 from Jeanette Marrero to the Docket, entitled "TSD for Proposed Revision to Michigan's Ozone SIP for the 1990 Base Year Emissions Inventory for Areas Designated Nonattainment for Ozone" (Emission Inventory TSD), which is available from the Region 5 office listed above.

I. Background

Under the Act, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The Act requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within 3 years of 1990 to reduce volatile organic compounds (VOC) emissions by 15 percent within 6 years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the reasonable further progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone SIP," USEPA, Office of Air Quality Planning and Standards (OAQPS), Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of title I of the Act. Further, the USEPA has issued a General Preamble describing USEPA's preliminary views on how USEPA intends to review SIP revisions submitted under title I of the Act. including requirements for the preparation of the 1990 base year inventory (57 FR 13502, April 16, 1992 and 57 FR 18070, April 28, 1992). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Michigan ozone base year emissions inventory, USEPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, USEPA will consider any comments submitted within the comment period before taking final action on this proposal.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the Act to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compounds (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16. 1992).

The inventory was submitted by the State to USEPA on January 5, 1993 as a proposed revision to the SIP. The State of Michigan held a public hearing on August 2, 1993 to receive public comment on the 1990 base year emission inventory for Detroit/Ann Arbor nonattainment areas and certified the hearing to the USEPA in a submittal on November 15, 1993. Supplemental information was also submitted on November 29, 1993.

The emission inventory was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 Code of Federal Regulations (CFR) part 51, appendix V, as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete on March 16, 1993 with the exception of evidence of a public hearing. After receiving evidence of the public hearing, a letter from David Kee, Director, Air and Radiation Division, USEPA, Region 5, dated January 7, 1994 was sent to the Governor's designee indicating the completeness of the submittal and the next steps to be taken in the review process.

II. Review of State Submittal

When reviewing the final inventory, USEPA used the Level I, II, and III, ozone nonattainment inventory quality review checklists provided by the OAQPS to determine the acceptance and approvability of the final emission inventory.

Level I is essentially the initial level of broad review that USEPA performs in order to determine if the inventory preparation guidance requirements found in the report "Emission Inventory Requirements for Ozone SIPs" (EPA–450/4–91–011) have been met. The Level II review addresses completeness, procedures and consistency for each of the four general source types in the inventory: stationary point and area sources, highway mobile sources, and non-highway mobile sources. The data quality is also evaluated. Detailed Level I and II review procedures can be found in the following document: "Quality Review Guidelines for 1990 Base Year Emission Inventories," USEPA, OAQPS, Research Triangle Park, NC, July 27, 1992.

Level III review procedures are specified in a memorandum from J. David Mobley, Chief, Emissions Inventory Branch, and G. T. Helms, Chief, Ozone/CO Programs Branch, to Air Branch Chiefs, Region I–X, "1990 Ozone/CO SIP Emission Inventory Level III Acceptance Criteria," October 7, 1992 and revised in a memorandum from John Seitz, Director, OAQPS, to Regional Air Division Directors, Region I–X, "Emission Inventory Issues," June 24, 1993. The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the Quality Assurance program contained in the IPP was performed and its implementation documented.

2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.

3. The point source inventory must be complete.

4. Point source emissions must have been prepared or calculated according to the current USEPA guidance.

5. The area source inventory must be complete.

6. The area source emissions must have been prepared or calculated according to the current USEPA guidance.

7. Biogenic emissions must have been prepared according to current USEPA guidance or another approved technique.

8. The method (e.g., Highway Performance Monitoring System or a network transportation planning model) used to develop Vehicle Miles Traveled (VMT) [1] estimates must follow USEPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, volume IV: Mobile Sources," USEPA, Office of Mobile Sources and OAQPS, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods were adequately described and documented in the inventory report.

9. The MOBILE model was correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions were prepared according to current USEPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process.

The USEPA reviewed the State submittal using the Level I, II and III criteria noted above. These findings are discussed further in the Emission Inventory TSD.

III. Proposed Action

The USEPA is proposing to fully approve the ozone emission inventory SIP submitted to USEPA for the Detroit/Ann Arbor area as meeting the section 182(a)(1) requirements of the Act for emission inventories. The State has submitted a complete inventory containing point, area, biogenic, on-road, and non-road mobile source data, and accompanying documentation. Emissions from these groupings of sources are presented in the following tables:

DAILY VOC EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone nonattainment area	Point source emissions	Area source emissions	On-road mobile source emissions	Non-road mobile source emissions	Biogenic emissions	Total emissions
Detroit/Ann Arbor	167.08	252.27	327.00	531.03	113.90	1391.28

DAILY CO EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone nonattainment area	Point source emissions	Area source emissions	On-road mobile source emissions	Non-road mobile source emissions	Total emissions
Detroit/Ann Arbor	146.28	45.22	3058.00	862.54	4112.04

DAILY NO_X EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone nonattainment area	Point source emissions	Area source emissions	On-road mobile source emissions	Non-road mobile source emissions	Total emissions
Detroit/Ann Arbor	734.62	56.36	437.00	108.22	1336.20

[1] VMT is the number of miles traveled by vehicles of various types, preferably for each link of the highway system. The VMT is estimated using various models and/or methods.

Detailed information on how each of the above source category groupings was determined is included in the Emission Inventory TSD.

B. Inspection and Maintenance

A detailed analysis of the Michigan I/M SIP submittal is contained in the USEPA's TSD, dated February 1, 1994 from Brad Beeson to the Docket, entitled "Technical Review of the Michigan SIP Submittal to Revise the I/M Program in Southeast Michigan" (I/M TSD), which is available from the Region 5 office listed above.

I. Background and Review Criteria

The Act requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B)(i) requires States to submit SIP revisions for any ozone nonattainment area which has been classified as marginal, pursuant to section 181(a) of the Act, with an existing I/M program that was part of a SIP prior to enactment of the Act, or any area that was required by the Clean Air Act, as amended in 1977 (1977 Act) to have an I/M program, to bring the program up to the level required in pre-1990 USEPA guidance, or to what had been committed to previously in the SIP, whichever was more stringent. Areas classified as moderate and worse ozone nonattainment areas were also subject to this requirement to improve programs to this level.

On November 15, 1993 the Michigan Department of Natural Resources (MDNR) submitted to the USEPA a revision to the Michigan SIP which was intended to address the requirements for an I/M program in the Detroit-Ann Arbor area. The revision included legislation which was signed into law by Governor Engler on November 13, 1993.[2]

At the same time as this legislation was being developed, the MDNR was also in the process of developing a redesignation request from nonattainment to attainment for the Detroit-Ann Arbor moderate ozone nonattainment area.

Section 107(d)(3)(E) of the Act states that an area can be redesignated to attainment if certain conditions are met. One of these conditions is that the USEPA has fully approved the applicable implementation plan under section 110(k) and that the State has met all applicable requirements of section 110 and part D. The USEPA's current approvability criteria for I/M in part require fully adopted rules for all aspects of the proposed SIP revision. In addition, all SIPs submitted must be subject to public hearing before they can be approved.

On November 5, 1992 (57 FR 52950), the USEPA published a final rule (I/M Rule) establishing I/M requirements pursuant to section 182. On June 28, 1994 the USEPA published a proposal to amend requirements pertaining to SIP submissions for areas required to implement a basic I/M program that submit, and otherwise qualify for approval of, a redesignation request ("Proposed I/M Redesignation Rule"). The authority for that amendment is discussed in that proposal.

The I/M Redesignation Rule proposes to allow areas that have requested redesignation to attainment, and are otherwise eligible to obtain approval of the request, to defer adoption and implementation of otherwise applicable requirements established in the originally promulgated I/M rule. For such areas, the USEPA does not believe it is necessary to revise or adopt new regulations which are not essential for clean air, and which would not be implemented after redesignation occurred because they are not necessary for maintenance. The proposed rule applies only to areas that by virtue of their air quality classification are required to implement a basic I/M program and that submit and obtain approval of a redesignation request.

For such areas, the I/M Redesignation Rule proposes that the I/M component of the I/M SIP contain the following four criteria:

(1) Legislative authority for basic I/M meeting all the requirements of subpart S such that implementing regulations can be adopted without any further legislative action,

(2) A provision in the SIP providing that basic I/M be placed in the contingency measures portion of the maintenance plan upon redesignation,

(3) a contingency measure consisting of a commitment by the Governor or his/her designee to adopt regulations to implement the I/M program in response to a specified triggering event, and

(4) a commitment that includes an enforceable schedule for the adoption and implementation of a basic I/M program including appropriate milestones in the event the contingency measure is triggered.

In this rulemaking, the USEPA is considering Michigan's I/M submittal based on the proposed I/M requirements for areas otherwise eligible for redesignation. If the State's redesignation request is not otherwise eligible for approval at the time the USEPA takes final action on it, or if the proposed I/M requirements for redesignation are not codified, Michigan's submittal will be judged by the current I/M approvability criteria as detailed in the USEPA's final I/M rule promulgated on November 5, 1992.

As discussed in the Proposed I/M Redesignation Rule, while the USEPA considers the redesignation request, the State continues to be required to meet all the current SIP submission requirements including fully adopted rules and specific implementation deadlines as required under 40 CFR § 51.372 of the I/M Rule. If the State does not comply with these requirements, it could be subject to sanctions pursuant to section 179. If the redesignation request is approved, any sanctions already imposed or any sanctions clock already triggered would be terminated.

II. Finding of USEPA Review

On November 15, 1993 the State submitted a redesignation request including I/M as a contingency measure for the Detroit-Ann Arbor area to the USEPA.

Using the proposed I/M Redesignation Rule criteria for areas redesignating from nonattainment to attainment, Michigan's I/M SIP submittal for the Detroit-Ann Arbor area is acceptable. The State held public hearings on the State's submittal February 14, 1994 in Detroit, Michigan.

With respect to the first element of the four criteria, the proposed I/M Redesignation Rule requires "legislative authority for basic I/M such that implementing regulations can be adopted without any further legislative action." The legislation adopted by Michigan as a whole includes all the essential elements of a satisfactory basic I/M program. The essential elements include:

- Describing the network type ("test and repair").[3]
- Listing of geographic coverage of program (Wayne, Oakland, Macomb, and possibly Washtenaw if redesignated, or Wayne, Oakland, Macomb, Washtenaw, St. Clair, Livingston, and Monroe if not redesignated).
- Specifying the test type and procedure (idle test with BAR 90 equipment).

[2] In addition to legislation revising the I/M program in the Detroit-Ann Arbor area, the State also submitted adopted legislation establishing an I/M program on the west side of the State. For reasons of clarity, however, that program will be the subject of a future **Federal Register** notice. Today's rulemaking only addresses the State's submittal related to the program in the Detroit-Ann Arbor area.

[3] The parenthetical information refers to the specifics in the Detroit-Ann Arbor, Michigan legislation.

- Listing of other applicable testing procedures (visual tampering inspection).
- Defining subject vehicle population (1975 and later).
- Specifying testing frequency (every 12 months).
- Granting authority to a State agency to develop necessary rules (MDNR).
- Establishing the enforceable obligation in the rule (persons shall not drive a motor vehicle without a valid emissions certificate of compliance or waiver).

In addition to defining the elements essential to the definition of an I/M program, the legislation grants the authority to MDNR to develop the rest of the language necessary to make the program complete, including technical and administrative details. No further legislative action is necessary to authorize or implement the program.

In the event of redesignation, the USEPA believes that the States's approach to implement I/M in the counties of Wayne, Oakland, Macomb, and Washtenaw counties is acceptable and meets the population requirements (geographic coverage) specified in the I/M rule (40 CFR 51.350).

Because the State has authorized and provided the essentials of an I/M program in its adopted legislation, the first element of the criteria proposed in the I/M Redesignation Rule is satisfied.

The second element of the I/M Redesignation Rule proposes to require "a provision in the SIP providing that basic I/M be placed in the contingency measures portion of the maintenance plan upon redesignation." This requirement is satisfied by the provision of section 8(2)(a) which requires a basic I/M program to be implemented as a contingency measure.

The third and fourth elements of the proposed I/M Redesignation Rule require an enforceable schedule and commitment by the Governor or his/her designee for the adoption and implementation of a basic I/M program upon a specified, appropriate triggering event. These elements are satisfied based on language submitted to the USEPA on November 15, 1993 under separate cover, within the State's redesignation application. Section 6.8.3 of the State's Southeast Michigan Redesignation TSD states "implementation of the contingency measure[s] will be completed in a time-frame consistent with schedules of implementation required for SIPs under title I of the Act and corresponding regulations." This commitment was submitted to the USEPA on November 15, 1993 under the signature of Roland Harmes, the Governor's designee. The USEPA assumes that the effective date of the basic I/M legislation as a contingency measure is the date that the State determines that a basic I/M program is necessary, as shown by the urban airshed model (UAM), to correct a violation of the ozone NAAQS. The USEPA further assumes that the basic I/M program will be implemented in the Detroit-Ann Arbor area as a contingency measure 1 year from the effective date of the legislation as stipulated in the I/M rule 40 CFR 51.373(b).[4]

While the USEPA is proposing approval of the State's I/M submittal based on the criteria proposed in the I/M Redesignation Rule, if the State's redesignation request is not approved, or if the alternative approval criteria applicable to redesignation is not codified as proposed, the State's submittal must be judged against the current I/M approvability criteria which require fully adopted rules for all aspects of the program, as detailed in USEPA's final I/M rule of promulgated on November 5, 1992. The State's submittal would then not be approvable because the submittal does not include detailed rules, including cut points, test procedures and standards, quality control procedures, waiver provisions, and program compliance and oversight.

III. Proposed Action

Because the State's submittal meets the I/M approvability criteria for areas redesignating from nonattainment to attainment, USEPA is proposing to approve the I/M plan for the Detroit-Ann Arbor area that was submitted as a revision to the Michigan SIP. Alternatively, USEPA is proposing to disapprove the State's I/M SIP for the Detroit-Ann Arbor area if the State's redesignation request is ultimately not approved or if the I/M Redesignation Rule is not codified as proposed in USEPA's I/M rule before the USEPA finalizes its approval of the redesignation.

C. Redesignation

Under the Act, nonattainment areas can be redesignated to attainment if sufficient data are available to warrant such changes and the area satisfies other criteria contained in section 107(d)(3) of the Act. On November 12, 1993 the State submitted a redesignation request and section 175A maintenance plan. If approved, the section 175A maintenance plan would become a federally enforceable part of the SIP for the Detroit-Ann Arbor area.

[4] Title 40 CFR 51.373(b) specifies the implementation of a basic I/M program within 1 year of obtaining legal authority.

A detailed analysis of the Michigan Redesignation Request and section 175A Maintenance Plan SIP submittal for the Detroit-Ann Arbor area is contained in the USEPA's TSD, dated February 24, 1994 from Jacqueline Nwia to the Docket, entitled "TSD for the Request to Redesignate the Detroit/Ann Arbor, Michigan Moderate Nonattainment Area to Attainment for Ozone and the Proposed Revision to the Michigan Ozone SIP for a 175A Maintenance Plan" and "Amendments to the February 24, 1994 TSD for the Request to Redesignate the Detroit/Ann Arbor, Michigan Moderate Nonattainment Area to Attainment for Ozone and the Proposed Revision to the Michigan Ozone SIP for a 175A Maintenance Plan," dated June 21, 1994 (Redesignation/Maintenance Plan TSD), which are available from the Region 5 office listed above.

I. Background

The 1977 Act required areas that were designated nonattainment based on a failure to meet the ozone NAAQS, to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The Detroit-Ann Arbor area was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS (43 FR 8962, March 3, 1978 and 43 FR 45993, October 5, 1978).

After enactment of the amended Act on November 15, 1990 the nonattainment designation of the Detroit-Ann Arbor area continued by operation of law according to section 107(d)(1)(C)(i) of the Act; furthermore, it was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) (56 FR 56694, November 6, 1991 and 57 FR 56762, November 30, 1992), codified at 40 CFR 81.323.

The Detroit-Ann Arbor area more recently has ambient monitoring data that show no violations of the ozone NAAQS, during the period from 1991 through 1993. The area, therefore, became eligible for redesignation from nonattainment to attainment consistent with the amended Act, and to ensure continued attainment of the ozone standard, Michigan also submitted an ozone maintenance SIP for the Detroit-Ann Arbor on November 12, 1993. On November 12, 1993 Michigan requested redesignation of the area to attainment with respect to the ozone NAAQS. On October 22, 1993 Michigan held a public hearing on the maintenance plan component of the redesignation request.

II. Evaluation Criteria

The 1990 Amendments revised section 107(d)(3)(E) to provide five

specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;

2. The area has met all relevant requirements under section 110 and part D of the Act;

3. The area has a fully approved SIP under section 110(k) of the Act;

4. The air quality improvement must be permanent and enforceable;

5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of State Submittal

The Michigan redesignation request for the Detroit-Ann Arbor area will meet the five requirements of section 107(d)(3)(E), noted above, if the VOC RACT "fix-up,"[5] and "catch-up,"[6] and major non-CTG submittals[7], the 1990 base year emission inventory, basic I/M, and the section 182(f) NO_X exemption petition are also fully approved by the USEPA.[8] Because the maintenance plan is a critical element of the redesignation request, USEPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. USEPA's Redesignation/Maintenance Plan TSD contains a more in-depth analysis of the submittal with respect to certain of these evaluation criteria.

1. Attainment of the ozone NAAQS

The Michigan request is based on an analysis of quality-assured ozone air quality data which is relevant to the maintenance plan and to the redesignation request. Ambient air ozone monitoring data for calendar year 1991 through calendar year 1993[9] show an expected exceedance rate for the ozone standard of less than 1.0 per year of the ozone NAAQS in the Detroit-Ann Arbor area (40 CFR 50.9 and appendix H). Because the Detroit-Ann Arbor area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the Detroit-Ann Arbor area has met the first statutory criterion of attainment of the ozone NAAQS. The State committed to continue monitoring in this area in accordance with 40 CFR part 58. (If, however, complete quality assured data shows violations of the ozone NAAQS before the final USEPA action on this redesignation, the USEPA proposes that it disapprove the redesignation request.)

2. Meeting Applicable Requirements of Section 110 and Part D

On May 6, 1980 (45 FR 29801) and February 7, 1985 (50 FR 5250), USEPA fully approved Michigan's SIP for the Detroit-Ann Arbor area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act with the exception that Michigan must meet the part D RACT requirements for the ozone SIP. The 1990 Act, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to satisfy the requirement that the SIP meet all applicable requirements under the 1990 Act, USEPA has reviewed the SIP to ensure that it contains all measures that were due under the amended 1990 Act prior to or at the time Michigan submitted its redesignation request for the Detroit-Ann Arbor area. The USEPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved, the State has met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the Act that come due subsequently, continue to be applicable to the area at those later dates [see section 175A(c)] and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

(A.) *Section 110 Requirements.* Although section 110 was amended by the Act, the Detroit-Ann Arbor area SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, USEPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended (57 FR 27936 and 23939, June 23, 1993) many are duplicative of other requirements of the Act. The USEPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

(B.) *Part D Requirements.* Before the Detroit-Ann Arbor area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). The Detroit-Ann Arbor area was classified as moderate (56 FR 56694, November 6, 1991), codified at 40 CFR 81.323. Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176 as well as the applicable requirements of subpart 2 of part D.

(B1.) Subpart 1 of Part D—Section 172(c) Provisions. Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated as nonattainment under the amended Act. The USEPA has not determined that these requirements are applicable to ozone nonattainment areas on or before November 12, 1993—the date the State submitted a complete redesignation request for the Detroit-Ann Arbor area. Therefore, the State was not required to meet these requirements for redesignation purposes. In addition, as discussed below, Michigan has either satisfied the section 172(c) requirements or, as is the case for several of them, they lose their continued force once an area has demonstrated attainment and maintenance of the ozone NAAQS.

(1) RFP is defined as progress that a nonattainment area must make each year toward attainment of the ozone NAAQS. This requirement only has relevance during the time it takes an area to attain the NAAQS. Because the Detroit-Ann Arbor area has attained the ozone NAAQS, its SIP has already achieved the necessary RFP toward that goal.

(2) In addition, because the Detroit-Ann Arbor has attained the ozone NAAQS and is no longer subject to an RFP requirement, the section 172(c)(9)

[5] Section 182(b)(2) of the Act requires that moderate and above ozone nonattainment areas adopt RACT rules for three types of sources or source categories, i.e. RACT for source categories covered by the CTGs and for major sources that are not subject to a CTG, regardless of time of nonattainment designation.

[6] Section 182(a)(2)(A) of the Act requires that ozone nonattainment areas submit rules and corrections to existing VOC rules that were required under the section 172(b)(3) RACT provision of the pre-amended Act (and related guidance).

[7] Rules for major non-CTG sources are a requirement under the Section 182(b)(2) catch-ups.

[8] The emission statement program was fully approved in e final rulemaking ection on March 8, 1994 (59 FR 10752).

[9] The redesignation request documentation presents 1990–1992 ambient air quality monitoring data demonstrating that the Detroit-Ann Arbor area attained the ozone NAAQS. In order to submit the redesignation request before November 15, 1993, Michigan prepared most of this documentation during the 1993 ozone season, when the 1993 ozone data was not available. However, the USEPA reviewed the ambient monitoring data for 1993 contained in AIRS which demonstrates that the area continues to attain the ozone NAAQS.

contingency measures are not applicable unless the redesignation request and maintenance plan are not finally approved. Such contingency measures must take effect if the area fails to meet an RFP milestone or fails to attain the ozone NAAQS; the Detroit-Ann Arbor area no longer has RFP milestones and has already attained the NAAQS. However, section 175A contingency measures still apply.

(3) Similarly, once an area is redesignated to attainment, nonattainment new source review (NSR) requirements are not generally applicable. The area then becomes subject to prevention of significant deterioration (PSD) requirements instead of the NSR program (57 FR 13564). The State has an acceptable program for review of new sources (45 FR 29790, May 6, 1980 and 47 FR 3765, February 7, 1985). The PSD program was delegated to the State of Michigan on September 10, 1979 and amended on November 7, 1983 and September 26, 1988. Moreover, as discussed with respect to the NSR requirements of part D, the USEPA believes that the applicability of the part C PSD program to maintenance areas makes it unnecessary to require that an area have obtained full approval of the NSR revisions required by part D in order to be redesignated.

(4) The 172(c)(3) requirement for an emissions inventory has been met by submission and proposed approval of the 1990 base year emission inventory required by section 182(a)(1).

(5) No additional Reasonably Available Control Measures (RACM) controls beyond what may already be required in the SIP are necessary upon redesignation to attainment. The General Preamble (57 FR 13560, April 16, 1992) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the areas attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment.

(6) For purposes of redesignation, the Michigan SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, under the Act were satisfied. Title 40 CFR 52.1172 evidences that the Michigan SIP was approved under section 110 of the Act, and further that it satisfies all part D, title I (as amended in 1977) requirements on May 6, 1980 (45 FR 29801) and February 7, 1985 (50 FR 5250) with the exception that Michigan must meet the part D RACT requirements for the ozone SIP.

(B2.) Subpart 1 of Part D—Section 176 Conformity Provisions. Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required the USEPA to promulgate. Congress provided for the State revisions to be submitted on year after the date for promulgation of the final USEPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the implementation of title I informed States that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)]. The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Michigan is required to submit a SIP revisions containing transportation and general conformity criteria and procedures consistent with those established in the Federal rule by November 25 and 30, 1994, respectively. Because the deadline for such submittals has not yet come due, it is not an applicable requirement, under section 107(d)(3)(E)(v), for approval of this redesignation request.

(B3.) Subpart 2 Requirements. Detroit-Ann Arbor is a moderate ozone nonattainment area. Under subpart 2, as of the date the State submitted a complete redesignation request, it is required to have met the requirements of section 182(a)(1), (2), and (3), section 182(b)(2), and (4), and section 182(f). The State has submitted SIP revisions which have not yet been approved by the USEPA but must be in order to find that the State has met all the applicable requirements of the following sections of the Act: Section 182(a)(1) 1990 base year emission inventory, section 182(a)(2)(A) VOC RACT "fix-ups," section 182(a)(2)(B) I/M fix-ups, section 182(b)(2) ("catch-ups") VOC RACT for each VOC source covered by a CTG issued between enactment of the Act and the attainment date (since the due date for these rules is November 15, 1994 which has not come due yet, it is not a requirement for approval of this redesignation request), all VOC sources covered by any CTG issued before the date of enactment of the Act, and all other major stationary sources of VOC located in the area, section 182(b)(4) basic I/M, and section 182(f) NO_X requirements. Section 182(b)(3) Stage II vapor recovery was also an applicable requirement. However, the "onboard rule" [10] was published on April 6, 1994 and section 202(a)(6) of the Act provides that once onboard rules are promulgated, Stage II vapor recovery will no longer be a requirement. In addition, Michigan's emission statement program SIP submitted to satisfy the section 182(a)(3)(B) requirement was fully approved in a final USEPA rulemaking on March 8, 1994 (59 FR 10752). The USEPA is proposing to approve this redesignation request notwithstanding the lack of fully-approved provisions submitted in compliance with the NSR requirements of part D, section 182(b)(5) of the CAA. The USEPA believes, as suggested by the General Preamble at 57 FR 13564 (April 16, 1992), that the applicability of the part C PSD program to maintenance areas makes it unnecessary to require that an area have obtained full approval of NSR revisions required by part D in order to be redesignated. The USEPA believes that this interpretation of the Act is appropriate notwithstanding section 175A(d)'s requirements that the contingency provisions of a maintenance plan include a commitment on the part of the State to implement all measures, to control the relevant air pollutant, that were contained in the SIP prior to redesignation. The term "measure" is not defined in section 175A(d) and it appears that Congress utilized the terms "measure" or "control measure"

[10] The rule which was published by the USEPA on April 6, 1994 requires a vehicle based (onboard) system for the control of vehicle refueling emissions. Gasoline vapors which are normally vented to the atmosphere, are captured in a carbon canister and stored for later use by the vehicle's engine.

differently in different provisions of the CAA that concern the PSD and NSR permitting programs.

Compare section 110(a)(2)(A) and (C) with section 161. In light of this ambiguity in the use of the term "measure," the USEPA believes that the term "measure" as used in section 175A(d) may be interpreted so as not to include NSR permitting programs. That this is an appropriate interpretation is further supported by USEPA's historical practice dating back even before the 1990 CAA, of not requiring redesignating areas to demonstrate through modeling or otherwise a justification for replacing the nonattainment NSR program with the PSD program once an area was redesignated. Rather the USEPA has historically allowed the NSR program to be automatically replaced by the PSD program upon redesignation. Michigan has presented an adequate demonstration that the State has met all the requirements applicable to the area under section 110 and part D. The final approval of this redesignation request is contingent on the final approval of the SIP submittals as noted above. These requirements, their applicability and status are discussed in more detail in the USEPA's Redesignation/ Maintenance Plan TSD.

3. Fully Approved SIP Under Section 110(k) of the Act

In other sections of this action, USEPA is proposing approval of the 1990 base year emission inventory and basic I/M (meeting the criteria of the June 28, 1994 proposed I/M Redesignation Rule). The SIP submittals for satisfying the requirements for VOC RACT catch-ups, and fix-ups are being acted upon in a separate action. The 182(f) NO_X exemption petition also is being acted upon in a separate action. Once USEPA fully approves these submittals, the State will have a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended Act, USEPA approved the Michigan SIP control strategy for the Detroit-Ann Arbor nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. Furthermore, numerous Federal measures apply to the Detroit-Ann Arbor area. The State provided a detailed discussion of the development of the emission reductions of ozone precursors (VOC and NO_X) from 1988–1993. The State attributed the improvement in air quality that led to attainment of the ozone NAAQS to the federally enforceable Federal Motor Vehicle Control Program (FMVCP) and lower Reid Vapor Pressure (RVP) [11] control measures. The emission reductions achieved from 1988 through 1993 are 226 tons VOC (21 percent) and 45 tons of NO_X (3.4 percent) per day. In association with its emission inventory discussed below, the State demonstrated that point source VOC emissions were not artificially low due to local economic downturn. This was accomplished by setting all growth factors at a minimum value of 1.0 for 1990 and beyond. The USEPA finds that the combination of existing USEPA-approved SIP and Federal measures contribute to the permanence and enforceability of reduction in ambient ozone levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. Section 175A(d) requires that the contingency provisions include a requirement that the State will implement all control measures that were contained in the SIP prior to redesignation as an attainment area. In this action, USEPA is proposing approval of the State of Michigan's maintenance plan for the Detroit-Ann Arbor area because USEPA finds that Michigan's submittal meets the requirements of section 175A provided that the State's contingency measures that were required as SIP revisions prior to the submission of the redesignation request are fully approved. If USEPA determines after notice and comment that it should give final approval to the maintenance plan, the Detroit-Ann Arbor nonattainment area will have a fully approved maintenance plan in accordance with section 175A.

(A) *Emissions Inventory—Base Year Inventory.* The State has adequately developed an attainment emission inventory for 1993 that identifies 790 tons of VOC and 1336 tons of NO_x per day as the level of emissions in the area sufficient to attain the ozone NAAQS. The 1993 attainment inventory was based on the comprehensive inventories of VOC and NO_X emissions from area, stationary, and mobile sources for 1990. Consistent with emission inventory guidance, the 1990 base year emission inventory represents 1990 average summer day actual emissions for the Detroit-Ann Arbor area. Since the projected 1993 emissions are lower than the actual 1990 emissions (providing a more stringent attainment inventory) and 1993 is the attainment year, it is appropriate to utilize projected 1993 emissions for the attainment year inventory. Furthermore, the 1990 base year emission inventory was prepared in accordance with USEPA guidance. USEPA's TSDs prepared for the 1990 base year emission inventory (Emission Inventory TSD) SIP revision and the redesignation request (Redesignation/ Maintenance Plan TSD) contain more in-depth details regarding the emission inventories for the Detroit-Ann Arbor area.

The 1990 base year emission inventory also served as the basis for calculations to demonstrate maintenance by projecting emissions forward to the years 1993, 1996, 2000, and 2005. Projections are based on growth factors extracted from the Southeast Michigan Council of Governments Regional Development Forecast (RDF). Supplemental information used in the development of emission projections include source-specific data for electric utilities, automobile manufacturing, aircraft, and gasoline marketing.

Growth factors are derived from employment forecasts by two-digit Source Industrial Code by county. In addition, product output data was used to develop growth factors for motor vehicle manufacturing, and utilities. The area source growth factors used from RDF were based on population or housing data. Furthermore, all growth factors that were less than 1.0 were set equal to 1.0 for 1990 and beyond to offset any effects of negative growth possibly due to economic downturns.

In developing the mobile source emission estimates, the MOBILE5a model was used. The significant input parameters for the MOBILE5a model are analyzed in detail in the Redesignation/ Maintenance Plan TSD.

[11] VOC emission reductions, in part, resulted from RVP reductions from 11.0 psi in 1988 to 9.0 psi in 1993.

inventories for the Detroit-Ann Arbor area.

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In developing the mobile source emission estimates, the MOBILE5a model was used. The significant input parameters for the MOBILE5a model are analyzed in detail in the Redesignation/Maintenance Plan TSD.

The stationary source emission estimates (point and area) were developed using the geocoded emissions modeling and projections system (GEMAP). This emission projection model and supporting documentation were reviewed by Region 5 and the Emission Inventory Branch of the OAQPS during the developmental stages of the redesignation request and appear to be acceptable since GEMAP employs methodologies equivalent to the applicable USEPA guidance on emission projections (June 21, 1993 letter to John Schroeder and August 3, 1993 Record of Conversation with OAQPS, RADIAN and Region 5).

(B.) *Demonstration of Maintenance—Projected Inventories.* In order to demonstrate continued attainment, the State projected anthropogenic 1990 actual emissions of VOC and NO_x emissions to the years 1993, 1996, 2000, and 2005. These emission estimates are presented in the tables below and demonstrate that the VOC and NO_x emissions will remain below the attainment year emissions (1993). In fact, the emissions projections through the year 2005 show that emissions will be reduced from 1993 levels by 21 tons of VOC and 98 tons of NO_x per day by 2005. These emission reductions are primarily the result of the implementation of FMVCP. It is noted that the emission projections are conservative since they do not account for emission reductions that will result from the anticipated implementation of other control measures and programs during this time period.

VOC Emission Inventory Summary (Tons Per Day)

	1990	1993	1996	2000	2005
Point	153	154	155	156	157
Area	377	382	390	402	416
Mobile	326	254	234	214	196
Total	856	790	779	772	769

NO_x Emission Inventory Summary (Tons Per Day)

	1990	1993	1996	2000	2005
Point	711	735	756	685	725
Area	195	199	203	206	210
Mobile	437	402	362	326	303
Total	1,343	1,336	1,321	1,217	1,238

The emission projection methodologies used for the maintenance demonstration are the same as those used for the attainment inventory and discussed above.

The emission projections show that the emissions are not expected to exceed the level of the base year 1993 inventory during the 10-year maintenance period. Further emission reductions that will occur during this maintenance demonstration that are not accounted for in the emission projections presented in the tables above such as title III maximum achievable control technology for air toxics, and onboard refueling vapor recovery. The projected emission inventories were prepared in accordance with USEPA guidance. Finally, USEPA's Redesignation/Maintenance Plan TSD contains more in-depth details regarding the projected emission inventories for the Detroit-Ann Arbor area.

To demonstrate maintenance out to the year 2005 following redesignation, the State did not rely on certain SIP-approved measures. The State now requests that these measures (discussed below) be moved from the applicable SIP into the maintenance plan as contingency measures.

The State has demonstrated maintenance without basic I/M, Stage I expansion [12], Stage II and NO_x RACT. The Act required a SIP submittal for these control measures prior to the submittal of the redesignation request, and consequently, they are required to be fully adopted and fully approved into the SIP prior to or at the time of full approval of the redesignation request. However, since the State has demonstrated attainment and maintenance without these programs these measures can be incorporated into the area's maintenance plan as contingency measures (see, e.g., September 17, 1993 Shapiro memorandum). The June 28, 1994 Proposed I/M Redesignation Rule proposes to allow basic I/M to be included as a contingency measure in the form of enabling legislation. Stage I must be fully adopted since it is a SIP element that was due prior to the submittal of the redesignation request. Stage II, however, does not have to be fully adopted. In fact, since the "onboard rule" was published on April

[12] The expanded applicability of Stage I to county boundaries of each nonattainment area classified as moderate and above.

period. The tracking plan for the Detroit-Ann Arbor area consists of two components; continued ambient ozone monitoring and inventory updates. To demonstrate ongoing compliance with the NAAQS, Michigan will continue to monitor ozone levels throughout the area. The State will also conduct periodic inventories for the redesignated area every 3 years using the most recent emission factors, models and methodologies. The inventories will begin in 1996 with completion of the 1996 inventory by July 1, 1998. Periodic inventories for 1999, 2002, and 2005 will be completed with submittal to the USEPA on the first of October 2 years after the inventory year. The periodic inventory will consist of reviewing the assumptions of the maintenance demonstration such as VMT, population, employment, etc. If substantial changes are discovered, the State will reproject the emissions for the maintenance period.

The contingency plan contains only one trigger, a monitored air quality violation of the ozone NAAQS, as defined in 40 CFR 50.9. The trigger date will be the date that the State certifies to the USEPA that the air quality data are quality assured and no later than 30 days after an ambient air quality violation is monitored.

D. Contingency Plan

The level of VOC and NO_X emissions in the Detroit-Ann Arbor area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the Act, Michigan has provided contingency measures with a schedule for implementation in the event of a future ozone air quality problem. Contingency measures contained in the plan include basic I/M, NO_X RACT, Stage I expansion, Stage II, RVP reduction to 7.8 psi and intensified RACT for degreasing operations. In instances where the contingency measures must be actually adopted and implemented, the schedules specified for these SIPs in the Act and any corresponding regulations will be observed, with the exception of implementation of 7.8 RVP and intensified degreasing rules which will commence 12 months after the decision to employ these measures. Once the triggering event, a violation of the ozone NAAQS, is confirmed, the State will implement one or more appropriate contingency measure. Selection of the contingency measure(s) will be based on a technical analysis using UAM. The Governor will select the contingency measures within 6 months of a triggering event. The adoption and implementation schedules for the selected contingency measure(s) will be submitted to the USEPA with the UAM analysis. The USEPA understands, on the basis of the State's submission, that the adoption and implementation schedules specified in the Act and any corresponding regulations would be observed; therefore, the following schedules will be applicable for the contingency measures specified in the contingency plan:

- Basic I/M would be implemented as a contingency measure 1 year from the effective date of the legislation, which would be the date of the decision to employ a basic I/M program to correct a violation of the ozone NAAQS. Part 40 CFR 51.373(b) stipulates implementation of basic I/M within 1 year of obtaining legal authority.
- NO_X RACT rules would be submitted 2 years from date of the decision to employ NOx RACT as a contingency measure. The NO_X RACT rules would be implemented 30.5 months from the date NOx RACT rules are submitted to the USEPA or 54.5 months from the date of the decision to employ NO_X RACT as a contingency measure. This schedule is consistent with section 182(b)(2)(C) which is the schedule applicable to the adoption and implementation of NO_X RACT as specified by section 182(f).
- Implementation of Stage I expansion to the entire seven county Detroit-Ann Arbor area (currently, Stage I is implemented in Wayne, Oakland and Macomb counties) would be in accordance with the schedule contained in Michigan's Stage I legislation (Senate Bill 726, section 9i). Gasoline dispensing facilities of any size constructed after November 15, 1990 must implement Stage I within 6 months of the decision to employ Stage I as a contingency measure. Existing facilities dispensing 100,000 gallons or more of gasoline a month must implement Stage I within 1 year and facilities dispensing less than 100,000 gallons of gasoline a month must implement Stage I within 2 years of the decision to employ Stage I as a contingency measure.
- Stage II would be implemented according to the same schedule set forth for Stage I, since they are contained in the same legislation (Senate Bill 726), but will only be implemented in the counties of Wayne, Oakland, Macomb and Washtenaw.

Under separate cover, the State has submitted to the USEPA, as SIP revisions, fully adopted legislation allowing implementation of a basic I/M program, Stage I, and Stage II in the Detroit-Ann Arbor area. The legislation provide for implementation of these programs as contingency measures within areas redesignated to attainment for ozone.

The USEPA's Redesignation/Maintenance Plan TSD provides a more detailed discussion of each contingency measure.

The USEPA finds that the five contingency measures provided in the State submittal meet the requirements of section 175A(d) of the Act since they would promptly correct any violation of the ozone NAAQS.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the State has agreed to submit a revised maintenance SIP 8 years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional 10 years.

IV. Proposed Action

The USEPA proposes to approve the Detroit-Ann Arbor ozone maintenance plan as a SIP revision meeting the requirements of section 175A if there is full and final approval of the outstanding VOC RACT requirements previously discussed, 1990 base year emission inventory, basic I/M (meeting the criteria of the June 28, 1994 proposed I/M Redesignation Rule), and the section 182(f) NO_X exemption petition. In addition, the USEPA is proposing approval of the redesignation request for the Detroit-Ann Arbor area, subject to final approval of the maintenance plan, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation pending full approval of the SIP elements listed above. (In the alternative, if ambient air quality violations occur before USEPA takes final action on the proposed redesignation or if the USEPA does not fully approve any of the SIP revisions listed above, the USEPA proposes to disapprove this redesignation request.)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Ozone SIPs are designed to satisfy the requirements of part D of the Act and to provide for attainment and maintenance of the ozone NAAQS. This proposed

redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the USEPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by USEPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

D. Procedural Background

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future action will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of 2 years (54 FR 2222). The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive order 12291 on September 30, 1993.

E. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. section 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIP's 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. section 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 1994. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements. (section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Hydrocarbons, Intergovernmental relations, Carbon monoxide, Motor vehicle pollution, Particulate matter, Reporting and record keeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 24, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–17556 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5017–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the C&J Disposal site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the C&J Disposal site from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of 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), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the C&J Disposal site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the C&J Disposal site from the NPL may be submitted on or before August 19, 1994.

ADDRESSES: Comments concerning the deletion of the C&J Disposal site from the NPL may be submitted to: Jack O'Dell, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 29–102, New York, NY 10278.

Comprehensive information on the C&J Disposal site is contained in the EPA Region II public docket, which is located at EPA's Region II office (room 2900), 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 Mr. O'Dell at (212) 264–1263.

Background information from the Regional public docket is also available for viewing at the C&J Disposal site's Administrative Record repository located at: Hamilton Village Public Library, 13 Broad Street, Hamilton, NY 13346.

Supplementary Information

Table of Contents:

I. Introduction

EPA Region II announces its intent to delete the C&J Disposal site from the NPL and requests public comment on this action. The NPL is Appendix B to the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. 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 (the "Fund"). Pursuant to Section 300.425 (e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such site warrant action.

EPA will accept comments concerning the C&J Disposal site for thirty (30) days after publication of this notice in the **Federal Register** (until August 19, 1994).

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 C&J Disposal 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 Section 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

1. That responsible or other persons have implemented all appropriate response actions required; or
2. All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or 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.

The following procedures were used for the intended deletion of the C&J Disposal 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 starting on July 20, 1994 and concluding on August 19, 1994.
4. The Region has made all relevant documents available in the regional office and the local site information repository.

EPA Region II will accept and evaluate public comments and prepare a Responsiveness Summary which will address the comments received, before a final decision is made. 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.

If, after consideration of these 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 update. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA Region II.

IV. Basis for Intended Site Deletion

Site History and Background

The C&J Disposal site, located in the Town of Eaton, Madison County, New York, included a rectangular disposal trench which measured approximately 140 feet by 40 feet. The disposal trench was situated between a former railroad bed and an active agricultural field, and was on property immediately adjacent to residential property owned by C&J Leasing of Paterson, New Jersey. Approximately 100 feet south of where the trench was located is a small pond and adjacent wetlands which drain to Woodman Pond, a back-up water supply for the Village of Hamilton. There are twelve residences in the vicinity and downgradient of the site which use private wells as their source of drinking water.

During the 1970s, the trench area was used for the disposal of industrial wastes, although never licensed or permitted for that purpose. In March 1976, C&J Leasing was observed dumping what appeared to be paint sludges and other liquid industrial waste materials into the trench. An inspection of the site by the New York State Department of Environmental Conservation (NYSDEC) and the Village of Hamilton engineer revealed 75–100 drums lying in a pool of liquid waste. The trench was subsequently covered with fill, reportedly by C&J Leasing, apparently burying the drums observed in March 1976.

Sampling was conducted at the site by NYSDEC in 1985 and by EPA in 1986. Surficial soil samples obtained from the site revealed the presence of phenolic compounds, phthalates, various volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs) and lead. One of the phthalates, bis (2-ethylhexyl) phthalate, and elevated levels of lead were detected in the sediments of the small pond. The sampling of local residential wells in 1986 and later in 1988, by the New York State Department of Health (NYSDOH), did not detect any contaminants from the site.

The site was placed on the NPL in March 1989.

In April 1989, prior to the start of the RI/FS, the site was subject to an unauthorized excavation by the principals of C&J Leasing, leaving two large holes and three stockpiles of soil and waste material. The drums that were believed to have been previously buried may have been removed at this time, or earlier, and taken off-site. An extensive follow-up investigation failed to determine where the drums may have been taken.

In October 1989, EPA initiated the RI/FS. Results from the RI indicated that the contaminants at the site were confined to the waste disposal trench, with the exception of some low levels of contamination in the sediments of the small pond. The total volume of waste material and contaminated soil and debris in the disposal trench was estimated at 1,250 cubic yards (i.e., contained in the area of 140 feet by 40 feet and to a depth of 6 feet). The waste was determined to be non-uniformly distributed and comprised of soil mixed with a light-colored, friable, plastic-like residue and/or a similar synthetic matter, crushed drums and plastic bags (drum liners) contaminated with the same or similar plastic residue, and some wood debris.

The primary contaminants found in the trench area were various phthalates (i.e., bis(2-ethylhexyl) phthalate, di-n-octylphthalate, and di-n-butylphthalate), phenols (i.e., 2,4-dimethyl phenol, and 4-methylphenol) and VOCs (i.e., benzene, ethylbenzene, toluene, xylenes, and 4-methyl-2-pentanone). Lead, which was found at elevated levels during limited testing by EPA in 1986, was detected above background levels in only one sample during extensive RI sampling. Lead was also found at significantly elevated levels during EPA's post-RI sampling in 1991. A wide variety of PAHs were also found in the disposal trench and in surrounding surface soils. Since the PAHs were attributable to the old

railroad bed (due to their association with products used for railroad construction, operation, and maintenance, as well as where the PAHs were located at the site), they were considered to be background.

While some of the waste materials in the trench were in direct contact with the shallow ground water, the contaminants were found to be bound in the waste material and/or adsorbed to the adjacent soils and, therefore, were not migrating to the ground water from the trench. Extensive chemical analysis of the eight local residential wells (serving twelve residences) during the RI confirmed the prior results (i.e., that no contaminants from the site had migrated to these wells). Seven ground-water monitoring wells (four shallow and three deep), including one well in the center of the trench, also indicated no migration of contaminants from the trench to the ground water.

Testing of the water in the small pond indicated no migration of soluble contaminants from the site. The low levels of bis(2-ethylhexyl) phthalate and lead found in the sediments in the pond were attributable to overland soil transport by surface-water runoff.

The RI concluded that the potential for direct human and animal exposure, as well as the potential for future contaminant migration to the ground water and surface water, existed at the site and there were no permanent controls in place to prevent contaminant migration from the trench as a result of any deterioration or disturbance of the waste.

Following completion of the RI/FS, site security was upgraded by EPA. The upgrade included installing two locked gates, additional fencing, and posting of warning signs to restrict access of unauthorized persons. Also at this time, EPA performed additional sampling at the site, in preparation for the off-site disposal/treatment of the contaminated soil and debris.

On March 28, 1991, a Record of Decision was signed, selecting as the remedy for the site the excavation and removal of approximately 1,250 cubic yards of contaminated soil and debris, followed by its transportation to a permitted, Resource Conservation and Recovery Act-compliant waste management facility for treatment/disposal. The selected remedy included backfilling the trench with clean soil, re-vegetating the area, and quarterly monitoring of the ground water and downgradient residential wells for a period of one year. In addition, no remediation of the small pond was necessary because of the insignificant amount of contaminants in the sediments and because of the adverse impact excavation would have on the pond and its ecosystem.

Following the completion of the remedial design (RD) in August 1992, the remedial action (RA) commenced. Over the course of the RA, which was completed in June 1993, over 2,400 cubic yards of contaminated soil and debris (i.e., 173 truckloads containing 3,514 tons of material) were removed from the site. No intact drums were encountered during the excavation. Analysis of samples collected from monitoring wells located downgradient of the disposal trench two weeks after backfilling the trench indicated no contaminants had migrated to the wells as a result of excavation activities. Post-RA sampling by NYSDOH, as well as post-RA quarterly sampling by EPA, also indicated no contamination migration to residential wells.

Summary of Community Relations Activities

Overall, there has been moderate community interest shown with respect to activities at the site. Initially, interest was high due to the unauthorized excavation at the site, reports of neighborhood children playing at the site, the possibility of contaminated wells in the neighborhood, and the potential to pollute Woodman Pond (which, in part, contributed to the Village of Hamilton's decision to install municipal wells instead of continuing to use Woodman Pond for municipal drinking water). Interest in the site declined, however, when the testing and re-testing of local residential wells indicated that no contaminants attributable to the site were present in local wells, visible improvements were made in site security, and on-going contact was maintained with local officials and the community. At a public meeting on February 13, 1991, EPA presented the results of the RI/FS and identified the preferred remedial alternative for the site. The remedy presented for the site was extremely well received since it satisfied the prior requests of local officials and citizens for the complete removal of the chemicals at the site from their community.

Summary of Operation and Maintenance and Five-Year Review Requirements

There are no operation and maintenance requirements since all remediation activities have been completed. Because the implemented remedy does not result in hazardous substances remaining on-site above health-based levels, the five-year review does not apply.

Summary of How the Deletion Criteria Has Been Met

Residential well monitoring since 1986 has consistently indicated no contaminant migration to any of the local residential wells from the site. RI and RD sampling results indicated no site-related contaminants in on- or off-site monitoring wells. One year of post-RA quarterly sampling completed by EPA in January 1994 did not show any contaminants from the site in either the on-site monitoring wells or the local residential wells.

The primary pathways that threatened public health at the C&J Disposal site were direct exposure and possible ingestion of the chemicals at the site, as well as the possible future contamination of the ground water and local wells and the impact to the local environment from deterioration or disturbance of the contaminated waste. The results of the post-RA monitoring confirm that excavation and removal of the contaminants of concern from the C&J Disposal site renders both current and future pathways incomplete.

EPA and the State have determined that the response actions undertaken at the C&J Disposal site are protective of human health and the environment.

In accordance with 40 CFR Section 300.425(e), sites may be deleted from the NPL where no further response is appropriate. EPA, in consultation with the State, has determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Having met the deletion criteria, EPA proposes to delete the C&J Disposal site from the NPL.

Dated: July 1, 1994.

William J. Muzynski,

Acting Regional Administrator.

[FR Doc. 94–17669 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991–AA74

Medicare and State Health Care Programs: Fraud and Abuse; Clarification of the OIG Safe Harbor Anti-Kickback Provisions

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify various aspects of safe harbor provisions originally published in the **Federal Register** on July 29, 1991 as a final rule (56 FR 35952). The safe harbor provisions have been specifically designed to set forth those payment practices and business arrangements that will be protected from criminal prosecution and civil sanctions under the anti-kickback provisions of the statute. This proposed rule would modify the original set of final safe harbor provisions to give greater clarity to the rulemaking's original intent.

DATES: To assure consideration, public comments must be delivered to the address provided below by September 19, 1994. Comments are available for public inspection August 4, 1994.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–35–P, room 5246, 330 Independence Ave., SW., Washington, DC 20201.

If you prefer, you may deliver your comments to room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–35–P. Comments are available for public inspection in room 5551 330 Independence Avenue, SW., Washington, DC, on Monday through Friday each week from 9 a.m. to 5 p.m., (202) 619–3270.

FOR FURTHER INFORMATION CONTACT:

Sandra Sands, Office of the General Counsel, (202) 619–1306
Joel Schaer, Office of Inspector General, (202) 619–3270

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1991, we published in the **Federal Register** a final rule setting forth various safe harbor provisions to the Medicare and Medicaid anti-kickback statute (56 FR 35952). This regulation was authorized under section 14 of Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987. The final rule specified those payment practices that will not be subject to criminal prosecution under section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)), and that will not provide a basis for exclusion from Medicare or the State health care programs under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since publication of the final rule, we have become aware of a limited number of ambiguities that have created uncertainties for health care providers trying to comply with the safe harbor provisions. We have also become aware of certain instances where our intent, either to protect or preclude protection for particular business arrangements, is not fully reflected in the text of the regulation even though it is reflected in the preamble. This proposed rule would serve to modify the text of the July 29, 1991 final rule to conform to the rulemaking's original intent.

The clarifications contained in this proposed rule do not represent an attempt to reevaluate the wisdom of the original safe-harbor decisions. Instead, the changes set forth in this proposed rule would serve only to protect business practices originally intended to be protected by removing ambiguities in the regulatory language. This clarity should aid the formation of legal business practices without establishing any new significant legal obligations on the parties affected by the regulations.

II. Summary of the Proposed Changes

A. Clarification to the General Comments Section of Preamble

- Several individuals have commented that the following sentence in the preamble has created confusion:

"Because the statute is broad, the payment practices described in these safe harbor provisions would be prohibited by the statute but for their inclusion here." (56 FR 35958)

This sentence was not meant to imply that, *in all instances irrespective of the parties intent,* the government could prosecute conduct described in the regulation, but for its inclusion in the regulation. Whether a particular payment practice violates the statute is a question that can only be resolved by an analysis of the elements of the statute as applied to that set of facts. Generally speaking, however, the original final rule did describe payment practices that would be prohibited, where the unlawful intent exists, but for the safe harbor protection that has been granted.

- In discussing the space and equipment rental and personal services and management contracts, we stated that if a "sham contract is entered into * * * we will look behind the contract" to its substance in evaluating whether the arrangement qualifies for safe-harbor protection (56 FR 35972). We received numerous inquiries as to whether we would similarly look behind the form of other arrangements to determine whether the substance of the arrangement fits within a particular safe harbor.

In some cases, such inquiries have led us to clarify particular safe harbors, as is illustrated by the following discussions of the safe harbors for investment interests, space and equipment rental, and personal services and management contracts. However, because of the broad variety of transactions subject to the Medicare and Medicaid anti-kickback statute and the ability of individuals to manipulate the safe harbors in ways not contemplated, we believe that a general rule preventing sham arrangements from receiving safe harbor protection would be appropriate. Thus, we are proposing adding a new § 1001.954 to the regulations. Such an approach has several precedents. The Federal Trade Commission (FTC) with the concurrence of the Department of Justice promulgated § 801.90 of the FTC's rules implementing the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (16 CFR 801.90), which disregards sham transactions entered into for the purpose of avoiding obligations under the Act. In addition, other Federal agencies (such as the Securities Exchange Commission and the Internal Revenue Service) have promulgated regulations and policies that seek to protect the government from making enforcement decisions based on information that does not accurately reflect the substance of the transaction. (See, for example, 17 CFR 240.12b–20; *Estate of Korman* versus *Comm.*, TC Memo 1987–120; and Rev. Rul. 81–149, 1981–1 CB 77.) Moreover, the courts have historically disregarded sham arrangements when examining the rights and obligations of the parties in tax cases. (See, for example, *Knetsch* versus *United States,* 364 U.S. 361 (1960); and *Thompson* versus *Commissioner of Internal Revenue,* 631 F.2d 642 (9th Cir. 1981), *cert. denied,* 452 U.S. 961 (1981).)

B. Clarifications to Investment Interests Safe Harbor (§ 1001.952(a))

- *Health Care Assets and Revenues*

In qualifying for the "large entity" or "small entity" investment interest safe harbors, the monetary value or amount of certain assets and revenues must be determined. Specifically, the safe harbors include: (1) The $50,000,000 asset threshold in § 1001.952(a)(1); and (2) the gross revenues in the "60–40 revenue rule" in § 1001.952(a)(2)(vi). In these cases, *only the assets or revenues related to the furnishing of health care items or services will be counted for the purposes of qualifying for these safe harbor requirements.* It would be an obvious sham, inconsistent with our original intent, if a joint venture could merge with a non-health care business and have those non-health care assets, and the revenues derived from that non-

health care line of business counted for the purposes of qualifying for safe harbor protection. We are thus proposing to revise these safe harbor provisions to further clarify our original intent that only health care assets and revenues will be counted in determining these values and amounts.

• *Acquisition of Investment Interests*

As set forth in § 1001.952(a)(1)(ii), an "interested" investor (who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity) must obtain his or her investment interest through trading on a registered national securities exchange on terms equally available to the public. This does not mean that an interested investor may acquire his or her interest in any way other than the methods available to the general public to acquire investment interests. We believe that the investor must acquire his or her investment interest in the *same way* as members of the public—directly off of a registered national securities exchange through a broker—and it must be the same type of investment interest that is available to the public. For example, a transaction in which the interested investor receives restricted or "lettered" stock from the entity would not be considered a valid acquisition of investment interests under this requirement.

The discussion above does not represent a change in this standard. Rather, it serves only to emphasize that the investment interest "*must be obtained* on terms equally available to the public through trading on a registered national securities exchange * * *" (§ 1001.952(a)(1)(ii)) (Emphasis added). Moreover, to obtain an investment interest "on terms equally available to the public," there cannot be any side agreements that require stock to be purchased or that restrict in any manner the investor's ability to dispose of the stock. Any such agreement would constitute a sham transaction which would disqualify dividend payments to that investor from safe harbor protection.

• *Loans for the Purchase of the Investment Interest*

One of the standards in the large and small entity investment interest safe harbors prohibits the entity from loaning an investor funds that are used by the investor to purchase his or her investment interest. (See §§ 1001.952(a)(1)(iv) and 1001.952(a)(2)(vii).) We are proposing to change this standard to prohibit other investors, individuals or entities as well as the entity from making such loans.

• *Class of Investment Interests*

In the 60–40 investor rule in the small entity investment interest safe harbor (§ 1001.952(a)(2)(i)), we established two categories of investors: (1) "untainted" or "disinterested" investors are those who do no business with the entity, but hold the investment interest purely as an investment; and (2) "tainted" or "interested" investors are those who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity. For purposes of determining in which category to place an investor, we require "each class of investments" to meet the 60–40 apportionment between the two categories.

We have become aware of the difficulty in applying the 60–40 rule to each class of investors in a joint venture where the general partners hold a separate class of stock or investment interest from the limited partners. In such a situation, that class of investment interest for the general partners consists of 100 percent "tainted" or "interested" investors since the general partners are providing services to the entity. Therefore, we believe that the entire joint venture does not qualify for safe harbor protection.

While it is not always true that an active investor holds a different class of investment interest from a passive investor, we have found that it is unnecessarily restrictive to have this 60–40 investor rule only apply to *each* class of investment interest. Thus, we are proposing to modify this first investment interest standard to allow an alternative to the class-by-class analysis. The new alternative would allow equity investment interests to be combined together or debt investment interests to be combined together (separate from the equity investments) for purposes of apportioning investors into "untainted" and "tainted" pools and meeting the 60–40 test. Only equivalent classes of equity investment interests could be combined, and only equivalent classes of debt investment interests could be combined. That is, the classes of investment interests combined would have to be similar in all material respects. For example, the classes to be combined would have to have equivalent returns in proportion to amounts invested. In addition, if one class is given preferential treatment (e.g., in the case of disposition), such an interest could not be combined with subservient interests for purposes of compliance with the 60–40 investor rule.

If a limited partnership has a general partner who holds 20 percent of the value of the investment interests, referring physicians hold 20 percent, and all the other investors have no business relationship with the partnerships, then the 60–40 investor rule would be met, as long as all other requirements are satisfied.

The 60–40 investor rule would not be met if any of the other disinterested investors in the above example holds a debt instrument instead of an equity instrument. For example, if a joint venture raises one-third of its capital through a debt instrument held by disinterested investors, with the remaining two thirds of its capital derived from equity instruments held equally by interested (physicians and general partners) and disinterested investors, the safe harbor would not be met. In this example, even though interested investors hold only one-third of all the investment interests, they hold one-half of the *equity* investment interests, and thus no safe harbor protection would be available.

We note that other standards in this small entity safe harbor preclude protection for abusive schemes to give referring investors preferential treatment *in any way* by creating different classes of investment. For example, if a joint venture creates two classes of stock, with one of the classes reserved for referring physicians who receive a higher dividend per share than non-referring investors in the other class, such an arrangement would not comply with at least sections 1001.952(a)(2) (ii), (iii) and (viii).

• *Items or Services Furnished by an Investor*

As discussed above, when an investor furnishes items or services to the joint venture, such as management services, he or she is a tainted or interested investor for the purposes of complying with the 60–40 investor rule (§ 1001.952(a)(2)(vi)). It was not our intent to have any revenues that the joint venture derives from this investor's services to be considered tainted for the purpose of qualifying for the 60–40 revenue rule.

Because of the apparent confusion caused by the language "items or services furnished" in this safe harbor standard, we are proposing striking it. The focus of the inquiry in this standard is *where* the business and clients are coming from. In other words, the revenues are tainted, and may not exceed 40 percent of total revenues, if they are derived "from referrals * * * or business otherwise generated from investors." We note that the language

we are proposing to strike—"items or services furnished"—is superfluous because, if the revenue is "generated" (i.e., induced *to come to* the joint venture for items or services *by an investor*), it is tainted. Thus, the language we are proposing to delete appears not to have added anything and merely caused confusion.

The following example demonstrates the confusion and our solution. If a radiologist holds an investment interest in an imaging center and reads all the films at the center, his or her reading of the film does not taint all the revenues from the referrals by non-investors. However, we have received a few questions from people who read the 60–40 revenue rule as making such referrals tainted because the investor furnished services at the joint venture.

We emphasize that if a radiologist-investor is reading the film *and* making referrals or otherwise generating business, then the revenues the joint venture derives from that activity would become tainted. For example, revenues would be tainted when a radiologist-investor takes part in a consultation with a non-investor internist, and during that consultation the radiologist recommends a procedure which is performed at the joint venture.

C. Clarifications to Space and Equipment Rental and Personal Services and Management Contracts Safe Harbors (§§ 1001.952 (b), (c) and (d))

• In the preamble discussing the safe harbor provisions for space and equipment rental and personal services and management contracts (56 FR 35971–74), we made clear that one of our concerns was that health care providers in a position to make referrals to each other who engaged in these business arrangements could renegotiate their contracts on a regular basis depending on the volume of business generated. It is for this reason that we require the leases or contracts be for a term of not less than one year. (See §§ 1001.952(b)(4), 1001.952(c)(4), and 1001.952(d)(4).)

It has come to our attention that a small number of health care providers believe they are complying with the literal terms of these safe harbor provisions, but are circumventing our intent not to protect agreements that are renegotiated based on the volume of business generated between the parties. They believe that they are protected if they enter into multiple agreements, each of which is for a period of one year, but when all the agreements are viewed together renegotiations are taking place more frequently (e.g., every month), with the terms of the additional agreements based in part on the volume of business being generated between the parties under existing agreements. For example, a one year personal services contract between a hospital and a high-volume referring physician is created for the physician to perform certain services. The next month a *new* one year contract is created for a slightly different service, with the amount of payment influenced by the previous months referrals.

This scenario does not comply with the requirement in each of these safe harbor provisions that the compensation not take "into account the volume or value of any referrals or business otherwise generated between the parties * * * ." (§§ 1001.952(b)(5), 1001.952(c)(5), and 1001.952(d)(5)). However, because the principal problem in this situation is that the parties are creating multiple overlapping agreements, we are proposing to revise these three safe harbor provisions to expressly preclude such schemes.

In addition, it appears that some health care providers are attempting to pay for referrals by renting more space than they actually need from referral sources. Although such an arrangement would not fit within a safe harbor because the aggregate rental charge would be determined in a manner that would account for the volume or value of referrals or business otherwise generated between the parties, we are proposing to revise the safe harbor provisions in §§ 1001.952 (b)(5), (c)(5) and (d)(5) to expressly preclude this practice.

D. Clarifications to Referral Services Safe-Harbor (§ 1001.952(f))

• One of the standards in the referral services safe harbor provision requires that any fee the referral service charges the participant be "based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated *by the participants* for the referral service * * * ." (Emphasis added) (§ 1001.952(f)(2)). This language precludes protection where a referral service, such as one operated by a hospital, *lowers* its referral service fee to one of its staff physicians who participates in the service because that physician is a high-volume referrer.

This language creates an ambiguity where the referral service tries to adjust its fee based on the volume of referrals *it makes to the participant*. Thus, we propose clarifying the second prong to preclude safe harbor protection for payments that are based on the volume or value of referrals to or business otherwise generated by either party for the other party.

E. Clarifications To Discount Safe Harbor (§ 1001.952(h))

• Many people requested clarification of the safe harbor for discounts. Because there has been some uncertainty over what obligations individuals or entities have to meet in order to receive protection under this safe harbor, we propose dividing the parties into three groups: buyers, sellers, and offerors of discounts. In describing each party's obligations, we would revise paragraphs (h)(1) and (h)(2), and add a new paragraph (h)(3).

In addition, through a proposed new paragraph (h)(4), we would clarify that, for purposes of this regulation, a "rebate" is any discount which is not given at the time of sale. Consequently, a rebate transaction may be covered within the safe harbor if it involves a buyer under § 1001.952 (h)(1)(i) or (h)(1)(ii), but it is not covered if it involves a buyer under § 1001.952(h)(1)(iii) because, under that provision, *all discounts must be given at the time of sale.*

We also wish to clarify what has to happen for sellers to receive safe harbor protection. In the safe harbor regulation itself, we state that discounts will be safe harbored if both the seller "and" the buyer comply with the applicable standards as described in the rule. Yet in the preamble we state that sellers should not be held liable for the omissions of buyers. If a seller has done everything that it reasonably could under the circumstances to ensure that the buyer understands its obligations to accurately report the discount, the seller is safe harbored irrespective of the omissions of the buyer. To receive such protection, however, the seller must report the discount to the buyer and inform the buyer of its obligation to report the discount. To emphasize that the seller's obligations require more than superficial compliance with the safe harbor, we propose to add to that the seller must inform the buyer "in an effective manner" of its obligations to report the discount. We also propose adding a requirement that the seller "refrain from doing anything that would impede the buyer from meeting its obligations under this paragraph." Thus, if the seller, in good faith, meets its obligations under the safe harbor and the buyer does not meet its obligations due to no fault of the seller, the seller would receive safe harbor protection. However, when the seller submits a claim or request for payment on behalf of the buyer, the seller must fully and accurately report the discount to

Medicare or the State health care program. Likewise, when an offeror of a discount meets its obligations under § 1001.952(h)(3), and the buyer or seller does not meet its obligations due to no fault of the offeror, the offeror would receive safe harbor protection.

In addition, we are proposing to clarify whether any reduction in price offered to a *beneficiary* could be safe harbored under this regulation. Congress protected "a discount or other reduction in price *obtained by a provider of services or other entity*" (emphasis added) and made no provision for such discounts obtained by a beneficiary. In § 1001.952(h)(3)(iv) of the regulation, we removed from safe harbor protection a "reduction in price offered to a beneficiary * * *." In that section, all we intended to remove from this safe harbor was "routine reduction or waiver of any coinsurance or deductible amount owed by a program beneficiary." Thus, to the extent that a discount is offered to a beneficiary and all other applicable standards in the safe harbor are met, such a discount would receive safe harbor protection.

Many people have expressed confusion regarding the relationship between the safe harbor for discounts and the statutory exception for discounts. (See section 1128B(b)(3)(A) of the Act.) Specifically, we are asked if there are any practices involving discounts which were protected by Congress under the statutory exception which do not fit within the safe harbor for discounts. Our intention is that *all* the discounts or reductions in price that Congress intended to protect under the statutory exception for discounts are protected under the safe harbor for discounts. Moreover, as is illustrated by the discussion above regarding discounts to beneficiaries, we are proposing to expand the safe harbor for discounts to include additional practices that we do not consider abusive.

In the preamble to the final regulation, we stated that when reporting a discount, one only need report the actual purchase price and note that it is a "net discount" (56 FR 35981). However, for purposes of submitting a claim or request for payment, what is necessary is that the value of the discount is accurately reflected in the actual purchase price. It is not necessary to distinguish whether this price is the result of a discount, or to state "net discount." Consequently, buyers who were uncertain about how and where to report on a particular form the fact that the price was due to a discount need not be concerned with reporting that fact, as long as the actual purchase price accurately reflects the discount.

Finally, we are proposing some minor editorial changes that do not affect the substance of the provision, but hopefully make it easier to understand.

F. Technical Correction

- A typographical error at 56 FR 35978 gave a citation to a HCFA rule on payment for intraocular lenses as "55 FR 436." We would correct this citation to the HCFA rule to read as "55 FR 4536."

- We are proposing the deletion of § 1001.953 which calls for the completion of an OIG report on compliance with the investment interest safe harbor at § 1001.952(a)(2)(i) and 1001.952(a)(2)(vi) within a specified period of time after publication of the original safe harbor provisions. While the OIG is continuing its work on evaluating this safe harbor provision, we believe completion of this report to be an internal administrative process that need not be set forth in the regulations.

III. Regulatory Impact Statement

As we indicated in the original safe harbor final rule published on July 29, 1991, consistent with the intent of the statute, the original safe harbor rulemaking and these proposed clarifications are designed to permit individuals and entities to freely engage in business practices and arrangements that encourage competition, innovation and economy. In doing so, the regulations impose no requirements on any party. Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute. We believe that the economic impact of these provisions would be minimal.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612). We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on a substantial number of small business entities, and we have, therefore, not prepared a regulatory flexibility analysis.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR part 1001 would be amended as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 would continue to read as follow:

Authority: 42 U.S.C. 1302, 1320a-7, 1320a-7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh, and section 14 of Public Law 100–93.

2. Section 1001.952 would be amended by:

a. republishing the introductory text for this section;

b. republishing the introductory text for paragraph (a)(1), and by revising paragraphs (a)(1)(iv), (a)(2)(i), (a)(2)(vi) and (a)(2)(vii);

c. revising paragraphs (b)(2) and (b)(5);

d. adding a new paragraph (b)(6);

c. revising paragraphs (c)(2) and (c)(5);

f. adding a new paragraph (c)(6);

g. revising paragraphs (d)(2), (d)(5) and (d)(6);

h. adding a new paragraph (d)(7);

i. revising paragraphs (f)(2); and

j. revising paragraph (h), to read as follows—

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

(a) *Investment interests.* * * *

(1) If, within the previous fiscal year or previous 12 month period, the entity possesses more than $50,000,000 in undepreciated net tangible assets (based on the net acquisition cost of purchasing such assets from an unrelated entity) related to the furnishing of health care items and services, all of the following five applicable standards must be met—

* * * * *

(iv) The entity or any investor (or other individual or entity acting on behalf of the entity or any investor in the entity) must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

* * * * *

(2) * * *

(i) No more than 40 percent of the value of the investment interests of each

class of investment interests may be held in the previous fiscal year or previous 12 month period by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity. (For purposes of § 1001.952(a)(2)(i), equivalent classes of equity investments may be combined, and equivalent classes of debt instruments may be combined.)

* * * * *

(vi) No more than 40 percent of the entity's gross revenue related to the furnishing of health care items and services in the previous fiscal year or previous 12 month period may come from referrals, or business otherwise generated from investors.

(vii) The entity or any investor must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

* * * * *

(b) *Space rental.* * * *

(2) The lease covers all of the premises leased between the parties for the period of the lease and specifies the premises covered by the lease.

* * * * *

(5) The aggregate space rented does not exceed that which is reasonably necessary to accomplish the legitimate business purpose of the rental.

(6) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

* * * * *

(c) *Equipment rental.*

* * * * *

(2) The lease covers all of the equipment leased between the parties for the period of the lease and specifies the equipment covered by the lease.

* * * * *

(5) The aggregate equipment rental does not exceed that which is reasonably necessary to accomplish the legitimate business purpose of the rental.

(6) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

* * * * *

(d) *Personal services and management contracts.*

* * * * *

(2) The agency agreement covers all of the services the agent provides to the principal for the period of the agreement and specifies the services to be provided by the agent.

* * * * *

(5) The aggregate services contracted for do not exceed those which are reasonably necessary to accomplish the legitimate business purpose of the services.

(6) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

(7) The services performed under the agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law.

* * * * *

(f) *Referral services.* * * *

(2) Any payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated by either party for the other party for which payment may be made in whole or in part under Medicare or a State health care program.

* * * * *

(h) *Discounts.* As used in section 1128B of the Act, "remuneration" does not include a discount, as defined in paragraph (h)(5) of this section, on an item or service for which payment may be made, in whole or in part, under Medicare or a State health care program for a *buyer* as long as the buyer complies with the applicable standards of paragraph (h)(1) of this section; a *seller* as long as the seller complies with the applicable standards of paragraph (h)(2) of this section; and an *offeror* of a discount who is not a seller under paragraph (h)(2) of this section so long as such offeror complies with the applicable standards of paragraph (h)(3) of this section:

(1) With respect to the following three categories of *buyers*, the buyer must comply with all of the applicable standards within one of the three following categories—

(i) If the buyer is an entity which is a health maintenance organization or a competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, it need not report the discount except as otherwise may be required under the risk contract.

(ii) If the buyer is an entity which reports its costs on a cost report required by the Department or a State health care program, it must comply with all of the following four standards—

(A) the discount must be earned based on purchases of that same good or service bought within a single fiscal year of the buyer.

(B) the buyer must claim the benefit of the discount in the fiscal year in which the discount is earned or the following year.

(C) the buyer must fully and accurately report the discount in the applicable cost report; and

(D) the buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii) of this section, or information provided by the offeror as specified in paragraph (h)(3)(ii) of this section.

(iii) If the buyer is an individual or entity in whose name a claim or request for payment is submitted for an item or service for which payment may be made, in whole or in part, under Medicare or a State health care program (not including individuals or entities receiving items or services from entities defined as buyers in paragraph (h)(1)(i) or (h)(1)(ii) of this section), the buyer must comply with all of the following three standards—

(A) the discount must be made at the time of the sale of the good or service (rebates are therefore not allowable);

(B) where an item or service is separately claimed for payment with the Medicare program or a State health care program, the buyer (if submitting the claim) must fully and accurately report the discount on that item or service; and

(C) the buyer (if submitting the claim) must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(iii)(B) of this section, or information provided by the offeror as specified in paragraph (h)(3)(iii)(A) of this section.

(2) The seller is an individual or entity that furnishes an item or service

for which payment may be made, in whole or in part, under Medicare or a State health care program to the buyer and who permits a discount to be taken off the buyer's purchase price. The seller must comply with all of the applicable standards within the following three categories—

(i) If the buyer is an entity which is a health maintenance organization or a competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, the seller need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer, is an entity that reports its costs on a cost report required by the Department or a State agency, the seller must comply with either of the following two standards—

(A) where a discount is required to be reported to Medicare or a State health care program under paragraph (h)(1) of this section, the seller must fully and accurately report such discount on the invoice, coupon or statement submitted to the buyer, inform the buyer in an effective manner of its obligations to report such discount, and refrain from doing anything which would impede the buyer from meeting its obligations under this paragraph; or

(B) where the value of the discount is not known at the time of sale, the seller must fully and accurately report the existence of a discount program on the invoice, coupon or statement submitted to the buyer, inform the buyer in an effective manner of its obligations to report such discount under paragraph (h)(1) of this section and, when the value of the discount becomes known, provide the buyer with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied, and refrain from doing anything which would impede the buyer from meeting its obligations under this paragraph.

(iii) If the buyer is an individual or entity not included in paragraph (h)(2)(i) or (h)(2)(ii) of this section, the seller must comply with either of the following two standards—

(A) where the seller submits a claim or request for payment on behalf of the buyer and the item or service is separately claimed, the seller must fully and accurately report the discount on the claim or request for payment to Medicare or a State health care program and the seller must provide, upon request by the Secretary or a State agency, information provided by the offeror as specified in paragraph (h)(3)(iii)(A) of this section; or

(B) where the buyer submits a claim, the seller must fully and accurately report such discount on the invoice, coupon or statement submitted to the buyer; inform the buyer in an effective manner of its obligations to report such discount; and refrain from doing anything that would impede the buyer from meeting its obligations under this paragraph.

(3) The offeror of a discount is an individual or entity who is not a seller under paragraph (h)(2) of this section, but promotes the purchase of an item or service by a buyer under paragraph (h)(1) of this section at a reduced price for which payment may be made, in whole or in part, under Medicare or a State health care program. The offeror must comply with all of the applicable standards within the following three categories—

(i) If the buyer is an entity which is a health maintenance organization or a competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, the offeror need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer is an entity that reports its costs on a cost report required by the Department or a State agency, the offeror must comply with the following two standards—

(A) the offeror must inform the buyer in an effective manner of its obligation to report such a discount; and

(B) the offeror of the discount must refrain from doing anything that would impede the buyer's ability to meet its obligations under this paragraph.

(iii) If the buyer is an individual or entity in whose name a request for payment is submitted for an item or service for which payment may be made, in whole or in part, under Medicare or a State health care program (not including individuals or entities defined as buyers in paragraph (h)(1)(i) or (h)(1)(ii) of this section), the offeror must comply with the following two standards—

(A) the offeror must inform the individual or entity submitting the claim or request for payment in an effective manner of their obligations to report such a discount; and

(B) the offeror of the discount must refrain from doing anything that would impede the buyer's or seller's ability to meet its obligations under this paragraph.

(4) For purposes of this paragraph (a), a *rebate* is any discount which is not given at the time of sale.

(5) For purposes of this paragraph (a), the term *discount* means a reduction in the amount a buyer (who buys either directly or through a wholesaler or a group purchasing organization) is charged for an item or service based on an arms-length transaction. The term *discount* does not include—

(i) Cash payment;

(ii) Furnishing one good or service without charge or at a reduced charge to include the purchase of a different good or service;

(iii) A reduction in price applicable to one payer but not to Medicare or a State health care program;

(iv) A routine reduction or waiver of any coinsurance or deductible amount owned by a program beneficiary;

(v) Warranties;

(vi) Services provided in accordance with a personal or management services contract; or

(vii) Other remuneration, in cash or in kind, not explicitly described in this paragraph (a)(5).

* * * * *

§ 1001.953 [Removed]

3. Section 1001.953 would be removed.

4. Section 1001.954 would be added to read as follows:

§ 1001.954 Sham Transactions or Devices.

Any transaction or other device entered into or employed for the purpose of appearing to fit within a safe harbor when the substance of the transaction or device is not accurately reflected by the form will be disregarded, and whether the arrangement receives the protection of a safe harbor will be determined by the substance of the transaction or device.

Dated: March 14, 1994.

June Gibbs Brown,

Inspector General.

Approved: April 22, 1994.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 94–16873 Filed 7–20–94; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 37 and 38

[Docket 49658; Notice 94–9]

RIN 2105–AC13

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes two sets of amendments to the Department of Transportation's rules implementing the Americans with Disabilities Act (ADA). The first group of proposals is based on petitions for rulemaking from members of the public. While the Department is publishing proposed amendments based on these petitions, in order to seek public comment on them, the Department is not now taking a position on whether these amendments should be adopted. The petitions would create an exception to the provision requiring transit providers to allow persons with disabilities to use every stop in the system, change the requirements affecting certain private schools that provide fixed route transportation, change the provision of the Department's technical standards concerning gaps for higher-speed people mover vehicles and eliminate the provision that requires paratransit systems to allow reservations to be made 14 days in advance. Second, the Department is proposing a number of minor or technical adjustments to clarify or improve administration of certain portions of the rule.

DATES: Comments are requested on or before October 19, 1994. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49658, Department of Transportation, 400 7th Street, S.W., Room 4107, Washington, D.C., 20590. Comments will be available for inspection at this address from 9:00 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION:

Petitions for Rulemaking

The Department has received four petitions for rulemaking, each of which requests an amendment to the Department's Americans with Disabilities Act (ADA) rules. The Department is acting on the petitions by issuing this notice of proposed rulemaking (NPRM). If, based on the comments and the Department's further consideration of the issues involved, the Department believes the proposed changes have merit, it can issue final rules based on this NPRM. At this time, however, the Department is not taking a position on whether the proposed changes should be adopted.

1. Inadequate Bus Stops

Seattle Metro seeks a change in 49 CFR 37.167(g), which provides as follows:

> The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.

In the Appendix to Part 37, DOT described the intent of this provision as follows:

> It is inconsistent with this section for a transit provider to refuse to let a passenger use a lift at any designated stop, unless the lift is physically unable to deploy or the lift would be damaged if it did. * * * In addition, if a temporary situation at the stop (construction, an accident, a landslide) made the stop unsafe for anyone to use, the provider could decline to use the lift there (just as it refused to open the door for other passengers at the same point). The provider could not, however, declare a stop "off limits" to persons with disabilities that is used for other persons. If the transit authority has concerns about barriers or safety hazards, that particularly affect individuals with disabilities that would use the stop, it should consider making efforts to move the stop. (56 FR 45755, September 6, 1991).

Seattle Metro urges the Department to change this policy. Metro's petition says that its bus lifts need 4–5 feet to deploy and that persons using mobility aids need another 4 feet in order to maneuver off the lift. The petition asserts that it has 6220 fully accessible bus stops, 1571 that do not meet present ADA standards (i.e., a lift cannot deploy at these stops), and 702 that could be used by standees but do not provide adequate space for wheelchair users. The inaccessibility of stops is due, Metro says, to factors such as topography and terrain, line of sight, traffic speed, and access to shoulder pullout areas, all of which are more or less permanent matters beyond its control. Often, local jurisdictions, rather than Metro, control these factors as well as the locations of the bus stops themselves. This, in Metro's view, often makes it impractical to relocate stops to more accessible locations.

Allowing passengers to choose to disembark at "inaccessible" locations may create safety hazards, Metro asserts. Passengers with disabilities should not be allowed to decide it is safe to use a particular stop, in Metro's view, particularly since the visual or cognitive disabilities of some passengers could impair their ability to make an adequate assessment of the situation and since a visual inspection might not, in any event, reveal the problems of a site. Metro is concerned about tort liability in such situations.

With its petition, Metro provided a brief videotape, which we have made part of the docket. It shows wheelchair users leaving or entering buses in locations where narrowness of the sidewalk (i.e., next to a retaining wall, adjacent to a grassy knoll) or other conditions (e.g., an eroded, broken sidewalk) make it difficult (but not necessarily impossible) to get on or off the bus.

Metro has petitioned the Department to amend § 37.167(g) in two ways. First, Metro would permit transit providers to refuse to allow persons with disabilities to use stops available to other passengers if "the lift, when fully deployed, would leave inadequate space at the stop for the passenger to obtain a secure and maintainable position on the ground." Second, Metro would add a sentence saying that "A stop which does not meet the specifications set forth in § 10.2.1(1) of appendix A to 49 CFR part 37 shall be deemed to provide inadequate space for passengers using common wheelchairs to obtain a secure and maintainable position on the ground." For information of potential commenters, the bus stop standards in Appendix A that Metro references are the following:

> 10.2.1 New Construction
>
> (1) Where new bus stop pads are constructed at bus stops, bays, or other areas where a lift or ramp is to be deployed, they shall have a firm, stable surface; minimum clear length of 96 inches (measured from the curb or roadway vehicle edge) and a minimum clear width of 60 inches (measured parallel to the vehicle roadway) to the maximum extent allowed by legal or site constraints; and shall be connected to streets, sidewalks, or pedestrian paths by an accessible route complying with 4.3 and 4.4. The slope of the pad parallel to the roadway shall, to the extent practicable, be the same as the roadway. For water drainage, a maximum slope of 1:50 (2%) perpendicular to the roadway is allowed.

It should be noted that Metro's proposal would apply this *new construction* standard to make judgments about allowing wheelchair users to use *existing* bus stops. Also, the standard

refers to "bus stop pads," not to bus stops in general. In addition, the standard's minimum clear width and length requirements are required "to the extent allowed by legal or site constraints." Site constraints would appear to include the kinds of conditions of which Metro's petition speaks.

The effect of its proposed amendment, Metro says, would be to allow transit providers to refuse to serve wheelchair passengers at stops that did not meet Access Board standards. According to Metro, this would place an additional 702 stops (8 percent of the total number of stops in the system) off limits to wheelchair users. However, other passengers with disabilities (e.g., standees) and passengers without disabilities would be served at these stops. While Metro's petition does not specify how service to origins and destinations served by these stops (or the other 19 percent of stops at which lifts will not deploy at all) would be made available to wheelchair users, the Department assumes individuals who need accessible service to those destinations would be eligible for paratransit.

2. Requirements for Private School Transportation

Congress exempted "public school transportation" from the transportation requirements of the ADA, by defining such transportation not to be "designated public transportation." The House Public Works Committee Report on the legislation says that it is the intent of Congress that the same exemption should apply to private elementary and secondary school transportation if the school receives Federal financial assistance, is covered by section 504 of the Rehabilitation Act of 1973, and provides equivalent transportation service to students with disabilities (see H. Rept. 101–485, Pt. 1, at 36). In addition, religiously-affiliated schools are exempt from the ADA altogether, based on the ADA's exemption for religious organizations. Section 37.27 of the Department's ADA regulation implements these exemptions.

As pointed out in the petition of the National Association of Independent Schools (NAIS), schools that are private, not religiously affiliated, and not recipients of Federal funds do not benefit from any of these exemptions. As private entities not primarily in the business of transporting people providing (usually) fixed route transportation with vehicles with a passenger capacity exceeding 16 persons, they are subject to a requirement to purchase all new accessible school buses.

NAIS says "[t]he cost of this requirement is enormous, and in relation to the cost the benefit to disabled students is minimal, because there is no need that every vehicle purchased be accessible; all disabled students may be served as long as a sufficient number of the vehicles are accessible." The NAIS petition seeks a modification of the current regulation to place its members on the same footing as other schools, saying that "independent schools which do not receive federal financial assistance are the only schools who are required to purchase accessible vehicles even when the school already has sufficient such vehicles to provide adequate services to students with disabilities."

The requested modification would amend § 37.27 to apply the same requirement to private schools that do not receive Federal assistance as to other private schools, i.e. a requirement to provide equivalent transportation services to students with disabilities.

3. People Mover Gap Standards

The Special Standards Division of the American Society of Civil Engineers (ASCE) has petitioned the Department to modify its technical standards concerning horizontal and vertical gaps for automated guideway transit (AGT) vehicles and systems, better known as "people movers." 49 CFR § 38.173 requires that the horizontal gap between a stopped AGT vehicle's door and the platform be no greater than one inch, with a vertical gap of plus or minus one half inch. The regulation allows other rail systems (e.g., rapid and light rail) to have horizontal and vertical gaps of 3 inches and plus or minus ⅝ inch, respectively.

ASCE suggests that the regulation should recognize a distinction between AGT systems based on vehicle speed. AGT systems vary in speed from 5 to 80 miles per hour, ASCE says, and it is, in the organization's view, more appropriate for higher-speed AGTs to meet the more flexible standards applicable to rapid and light rail systems than the narrower AGT standard. ASCE cites the Access Board's preamble discussion concerning AGT systems, which refers to "AGT vehicles that travel at slow speed," and subsequent Access Board manuals suggesting that the rapid/light rail gap should apply to faster AGT vehicles.

ASCE surveyed existing AGT systems, determining that most do not comply with the current AGT gap standards. The petition cites engineering reasons (e.g., the need in higher-speed vehicles for larger and more complex suspension systems, which in turn make it more difficult to meet existing gap standards) for this phenomenon. Based on its data and engineering analysis, ASCE recommends that 20 miles per hour be the dividing line: systems that operate below that speed can reasonably meet the current AGT standard, while faster systems should be allowed to meet the rapid/light rail standard. (The Access Board has interpreted its guidelines, as presently worded, to permit the construction urged by ASCE. The Department does not object to this interpretation; nevertheless, for the sake of clarity in the rule text, we are proposing to amend the language. The Department will also work with the Access Board to incorporate changes in the guidelines that may be made with respect to vehicle/platform gaps in AGT systems.)

4. 14-day Advance Reservations

49 CFR § 37.131(b)(4) provides, with respect to complementary paratransit services, that "the entity shall permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trip." This provision, not a part of the NPRM that led to the Department's final ADA rule, was added in response to comments to the NPRM.

Two separate petitions urge the Department to eliminate this provision. One is from Doug Douglas, Assistant Vice-President, Paratransit Services, of Dallas Area Rapid Transit (DART). Mr. Douglas draws a distinction between advance reservations in a context like the airline industry, where the customer goes to the point of service, and paratransit. In the former, he says, if a passenger cancels a reservation or does not show up for the plane, the airline can simply fill in the reserved spot with a standby passenger. Paratransit does not have this flexibility, since the vehicle must be rerouted in the case of a cancellation or makes a futile trip in case of a no-show. Cancellations and no-shows are a major problem for his system, Mr. Douglas asserts:

> There are a number of arguments to support the repeal of the 14 days advanced reservation requirements as prescribed by § 7.131. The most obvious reason is the waste of precious resources on clients who reserve trips well in advance, forget the trip has been scheduled, and do not call the provider to cancel the trip. Even when the client does remember to cancel the trip, they are only required to do so within an hour prior to the scheduled pick-up time, which does not allow us to effectively utilize the time slot for another client. We are averaging 16,183 canceled trips and 2,936 no-shows per month. Fourteen days advance reservation

does not appear to be operationally feasible in a paratransit environment, and should be repealed or revised to make it more palatable for providers of specialized transportation services.

Patrisha Piras, a California transportation consultant and Board member of AC Transit, also petitioned the Department to eliminate this provision. She views this provision as an impediment to the effective implementation of "real-time" scheduling for paratransit services. Her rationale is the following:

> Real-time scheduling provides a dynamic ability for the service provider to respond to the current level of demand from service users. Adjustments in wait time and vehicle trip patterns are based on the current situation "on the street." This is a significant contrast to traditional "advance reservation" systems, where trips are booked several days in advance, creating an artificial picture of actual service, since often users would subsequently cancel or rearrange trips, and the provider would then have to rearrange planned vehicle deployment and assignments.
>
> [In my experience] * * *, often up to one third of trips booked on an advance reservation system are ultimately cancels or no-shows. This further creates a "blocking" mechanism, so that potential users would call farther and farther in advance to ensure a better chance of getting a ride * * *.
>
> *What the 14-day advance provision does is to institutionalize capacity constraints*, with a preference for people who have decided on their trip long in advance. This is counter to other philosophical bases of the regulation, which call for paratransit service to be relatively comparable to fixed-route, including the sense of "spontaneity" without having to pre-plan a trip. The 14-day advance provision also imposes or allows an implicit priority to certain kinds of trips, such as medical or other appointments, where the rider (and often the provider as well!) wants to have the certainty in advance that the trip is available. This, too, is counter to the basic service criteria of the regulations.
>
> The 14-day advance reservation provision should be eliminated (or, at a minimum, be made permissive and subservient to the other criteria) * * * (emphasis in original).

By eliminating the 14-day provision, or making it permissive, the NPRM would permit transit providers to decline to accept reservations farther from the date of travel than the day before. The minimum reservation time requirement—that providers must provide next-day service—would, of course, remain in place.

DOT-Proposed Adjustments to the Rule

1. Reduction of Paperwork for Paratransit Plan Updates

Under the Department's ADA regulation, each fixed route public transit operator was required to submit a paratransit plan to the Federal Transit Administration (FTA) by January 26, 1992. Section 37.135(c) of the rule requires that "each entity shall submit an update to the plan on January 26 of each succeeding year." Section 37.139(j) requires these updates to include information needed to update the information requirements applying to the original plan, significant changes or revisions to the timetable, whether milestones for progress toward full compliance have been met, explanations of any slippage that has occurred in meeting the timetable for full compliance, and corrective action for any slippage. The same public participation requirements that applied to the original plan (including notice, a public hearing, and consultation with the disability community) apply to updates.

FTA data indicate that about 117 of the 540 fixed route operators required to submit paratransit plans have indicated that they expected to be fully in compliance by the end of 1993. Another 70 providers expected to be fully in compliance by the end of 1994. By full compliance, we mean that the transit property meets all six service criteria spelled out for paratransit systems in the regulation (concerning service area, response time, trip purpose, hours and days of service, fares, and capacity constraints). It appears unnecessary to require transit properties which in fact meet all criteria to do the paperwork for an update every year. If a system is fully in compliance, and no significant changes have occurred, going through this process has no benefit for passengers with disabilities.

For these reasons, the Department is proposing to modify §§ 37.135(c) and 37.139(j) to allow transit properties who fully comply with all service criteria for paratransit service to rely on the assurance of ADA compliance required by § 27.4, rather than submitting an update report. If significant changes occurred that could affect compliance, or if the system fell out of compliance with respect to one or more of the service criteria, it would have to notify FTA of the problem and submit annual updates until it had returned to compliance.

The Department has some concern that, if it adopts this proposal, it may not have an adequate source of data about the compliance status of transit authorities, ridership, or costs. Such data may be useful for program evaluation as well as forming a basis for reports to Congress or the public. The Department seeks comment on whether, if this proposal is adopted, there should be any additional data reporting requirements concerning paratransit compliance, ridership, and costs.

2. Visitor Eligibility

Section 37.127, concerning complimentary paratransit service for visitors, provides that a public entity is not required to provide service to a visitor for more than 21 days from the date of the first paratransit trip used by the visitor. We have been asked whether this means 21 consecutive days or a collection of days over a given period of time adding up to 21. For the sake of simplicity and clarity, we propose to add the words "per year." This means that a visitor could have any 21 days of eligibility in any calendar year.

3. Vehicle Acquisition for "Private Not Primarily Engaged" Providers

Section 37.101 contains the vehicle acquisition requirements for private entities not primarily engaged in the business of transporting people. Because of the way that section 302 of the ADA itself it drafted, there is no specific vehicle acquisition requirement for "private not primarily engaged" entities providing demand responsive service with vehicles having a capacity of 16 or fewer passengers. Rather, entities in this situation must provide equivalent service to passengers with disabilities. This requirement is set forth in § 37.171. To avoid confusion, we propose to add to § 37.101 a new paragraph containing a cross-reference to § 37.171.

4. Personal Care Attendants

Section 37.123(f)(1)(i) permits an eligible individual traveling on ADA paratransit to be accompanied by a "personal care attendant" (PCA) as well as by any other person of the individual's choice. Section 37.131(c)(3) says that the PCA rides without charge, while the other companion must pay the paratransit fare. These provisions have led to questions about who should be regarded as a PCA. Section 37.123(f)(1)(ii) attempted to provide guidance on this issue by saying that a family member or friend traveling with an eligible individual is not regarded as a PCA unless that person is acting in the capacity of a PCA. The Appendix discussion of this section notes that a PCA is someone "designated or employed specifically to help the individual meet his or her personal needs," such as eating, drinking, using the bathroom, communicating etc. The Appendix also notes that the paratransit provider may, as part of the eligibility certification process, require that eligible individuals register as users of PCAs. The companion of someone not

so registering could be charged the paratransit fare.

The Department is aware that there may be definitions of PCA used in other contexts (e.g., human services programs). We seek comment on whether one of these definitions would be appropriate for use in the context of paratransit.

5. Equivalent Facilitation

The current provisions concerning "equivalent facilitation" (§§ 37.7 and 37.9) require, as one condition for obtaining a determination of equivalent facilitation, that an entity demonstrate its "reasons for inability to comply" with the existing regulatory standards. In other words, before the Department can determine that something is an equivalent facilitation, the applicant must show not only that it is proposing a solution providing equal or greater accessibility, but also that it is precluded from using the solution provided for in the Department's standards. The purpose of this provision was to limit departures from established regulatory standards to those situations where they could not be applied and, therefore, to discourage a proliferation of solutions that might undermine the goal of having uniform, predictable standards. This approach has the disadvantage, however, of also discouraging newer technologies or more innovative solutions that might actually provide accessibility gains in some situations. For this reason, the Department is proposing to delete the "inability to comply" language from the equivalent facilitation sections of the rule. We seek comment on whether this is a good idea.

We would point out that the proposed change is not intended to diminish the requirement that any equivalent facilitation provide equal or greater accessibility. For example, it would not permit a rail system to avoid installing detectable warnings meeting the regulatory standards without that system having demonstrated that a substitute design was as detectable or more detectable by persons with impaired vision.

6. Clarification of Appendix Statement on Vehicle Lift Dimensions

Part 38, the Departments standards for accessible vehicles, contains dimensions for wheelchair lifts on vehicles. The reference to these dimensions in the Part 37, Appendix A, discussion of § 37.13 speaks of the "new 30" x 48" lift platform specifications." While the dimensions are 30 x 48 inches at a distance of two inches above the platform, the width of the platform need only be 28.5 inches at the platform itself. This seeming discrepancy has confused some readers. To resolve it, we propose to remove the words "30" by "48" from the Appendix, so that the reference is simply to the lift standards of Part 38.

7. Typographical Errors

In § 37.3, in the definition of "designated public transportation," the word "containing" in the final line should be "continuing." In § 37.11(a), the reference in the last line to "Subpart F" of 49 CFR Part 27 should be "Subpart C" (Part 27 no longer contains any Subpart F). Commenters are encouraged to note other such errors, so that they can also be corrected.

Regulatory Analyses and Notices

This NPRM does not propose a significant rule under Executive Order 12866. It is a significant NPRM under the Department's Regulatory Policies and Procedures, since it would amend the Department's Americans with Disabilities Act rule, which is a significant rule. We expect economic impacts to be minimal, so we have not prepared a regulatory evaluation. There are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment. The Department certifies that the proposals, if adopted, will not have a significant economic impact on a substantial number of small entities.

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

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 49 CFR Part 37 and 49 CFR Part 38 as follows:

PART 37—[AMENDED]

1. The authority citation for 49 CFR Part 37 is proposed to continue to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

2. The authority citation for 49 CFR Part 38 is proposed to be revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

3. In part 37, § 37.27(b) is proposed to be revised to read as follows:

§ 37. 27 Transportation for elementary and secondary education systems.

* * * * *

(b) The requirements of this part do not apply to the transportation of school children to and from a private elementary or secondary school, and its school-related activities, if the school is providing transportation service to students with disabilities equivalent to that provided to students without disabilities. The test of equivalence is the same as that provided in § 37.105. If the school does not meet the requirement of this paragraph for exemption from the requirements of this part, it is subject to the requirements of this part for private entities not primarily engaged in transporting people.

4. In part 37, § 37.135 is proposed to be amended by revising paragraph (c) to read as follows:

§ 37.135 Submission of paratransit plan.

* * * * *

(c) *Annual updates.* Except as provided in this paragraph, each entity shall submit an annual update to its plan on January 26 of each succeeding year.

(1) If an entity has met and is continuing to meet fully all requirements for complementary paratransit in §§ 37.121 through 37.133 of this part, the entity may submit to FTA on January 26 of each succeeding year a certification of compliance in lieu of a plan update. Entities that have submitted a joint plan under § 37.141 may submit a joint certification under this paragraph. The requirements of §§ 37.137 through 37.139 do not apply when a certification is submitted under this paragraph.

(2) In the event of any change in circumstances that results in an entity which has submitted a certification of compliance falling short of full compliance with §§ 37.121 through 37.133 in any respect, the entity shall immediately notify FTA of the problem. In this case, the entity shall file a plan update meeting the requirements of §§ 37.137 through 37.139 of this part on the next following January 26 and in each succeeding year until the entity returns to full compliance.

(3) An entity which has been granted a waiver from any provision of this part on the basis of undue financial burden shall file a plan update meeting the requirements of §§ 37.137 through 37.139 of this part on each January 26 during which the waiver is in effect.

5. In part 37, § 37.167 is proposed to be amended by revising paragraph (g) to read as follows:

§ 37.167 Other service requirements.

* * * * *

(g) (1) The entity shall not refuse to permit a passenger who uses a lift to

disembark from a vehicle at any designated stop, unless—

(i) The lift cannot be deployed;

(ii) The lift will be damaged if it is deployed;

(iii) The lift, when fully deployed, would leave an inadequate space at the stop for the passenger to obtain a secure and maintainable position on the ground; or

(iv) Temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.

(2) For purposes of this paragraph, a stop that does not meet the specifications set forth in § 10.2.1(1) of Appendix A to this part shall be deemed to provide inadequate space for passengers using common wheelchairs to obtain a secure and maintainable position on the ground.

6. In part 38, § 38.173(a) is proposed to be amended by adding the words "(i.e., at a speed of no more than 20 miles per hour at any location on their route during normal operation)" after the words "slow speed."

7. In part 38, § 38.173(d) is proposed to be amended by adding the following sentence at the end: "AGT systems whose vehicles travel at a speed of more than 20 miles per hour at any location on their route during normal operation are covered under this paragraph rather than under paragraph (a) of this section."

8. In part 37, § 37.131(b)(4) is proposed to be removed or, in the alternative, to be amended by substituting the word "may" for the word "shall."

9. In Part 37, § 37.127(e) is proposed to be amended by adding the words "per year" after the word "days".

10. In part 37, § 37.101 is proposed to be amended by adding a new paragraph (e), to read as follows:

§ 37.101 Purchase or lease of vehicles by private entities not primarily engaged in the business of transporting people.

* * * * *

(e) *Demand Responsive System, Vehicle Capacity of 16 or Fewer.* Providers of transportation in this category should refer to § 37.171 of this part for requirements pertaining to that service.

11. In part 37, § 37.7 is proposed to be amended by revising paragraph (b)(2) and removing and reserving (b)(3) to read as follows:

§ 37.7 Standards for accessible vehicles.

* * * * *

(b) * * *

(2) Specific provision of part 38 of this title concerning which the entity is seeking a determination of equivalent facilitation.

* * * * *

12. In part 37, § 37.9 is proposed to be amended by revising paragraph (d)(2) and removing and reserving (d)(3) to read as follows:

§ 37.9 Standards for accessible facilities.

* * * * *

(d) * * *

(2) Specific provision of Appendix A concerning which the entity is seeking a determination of equivalent facilitation.

* * * * *

13. In part 37, Appendix A, the paragraph entitled *"Section 37.13 Effective Date for Certain Vehicle Lift Specifications"* is proposed to be amended by deleting the words "30" x "48"."

14. In part 37, the definition of the term "Designated public transportation" in § 37.3 is proposed to be amended by revising the word "containing" to read "continuing".

15. In part 37, § 37.11(a) is proposed to be amended by revising the words "subpart F" to read "subpart C."

[FR Doc. 94–17735 Filed 7–20–94; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 940793–4193; I.D. 060994A]

RIN 0648–AG37

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would allow non-Federal entities to apply for, and NMFS to issue, permits for the incidental take of threatened species of sea turtles consistent with section 10(a) of the Endangered Species Act (ESA). Existing regulations provide for the issuance of an incidental take permit for endangered sea turtles.

DATES: Written comments must be received by August 22, 1994.

ADDRESSES: Comments on this proposed rule, and requests for copies of the Environmental Assessment (EA) for this proposed rule, should be addressed to William W. Fox, Jr., Ph.D., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Heather Weiner, Endangered Species Division, (301) 713–2319; Doug Beach, Protected Species Program Coordinator, NMFS Northeast Regional Office, (508) 281–9254; or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, (813) 893–3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, and the breeding population of olive ridley turtles on the Pacific coast of Mexico, which are listed as endangered.

In 1990, the National Academy of Sciences (NAS) completed a review of the biology of sea turtles and the causes and extent of their decline. The NAS concluded that incidental capture in shrimp trawls without turtle excluder devices (TEDs) is by far the leading cause of human-induced mortality to sea turtles at sea, but that collectively, activities in the non-shrimp fisheries constitute the second largest source of mortality. The study identified finfish trawls, seine nets, pompano gillnets, and various passive fishing gear, such as sink gillnets, weirs, traps and longlines, as potential sources of mortality to sea turtles.

Because threatened sea turtles are often incidentally taken in state coastal fisheries, NMFS established a regulatory framework that requires the use of TEDs on most shrimp trawls and allows NMFS to impose measures with respect to shrimp trawl and other fisheries to protect sea turtles, such as the use of limited tow times, the requirement to carry observers, and the closure of certain areas (57 FR 57348, December 4, 1992). Under this framework, measures are implemented as temporary restrictions, which is a time-consuming, repetitious, and short-term means to accomplish conservation measures for sea turtles. For example, NMFS has implemented many temporary

restrictions allowing the North Carolina shrimp fishery to comply with tow-time limits as an alternative to using TEDs in areas of high algae concentrations (see 58 FR 48975, September 21, 1993).

As an addition to the regulatory framework governing state fisheries in which listed species of sea turtles are incidentally taken, NMFS is proposing a rule that would extend section 10 permit regulations to all threatened species of sea turtles. Section 10(a)(1)(B) of the ESA authorizes the Secretary of Commerce (Secretary) to permit under such terms and conditions as he or she may prescribe, any taking otherwise prohibited by section 9(a)(1)(B) of the ESA, if the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. NMFS implemented regulations for the application and issuance of incidental take permits, under section 10(a) of the ESA, which appear at 50 CFR parts 220 and 222, and allow the Assistant Administrator for Fisheries, NOAA, (AA) to issue permits to incidentally take endangered marine species during otherwise lawful activities.

While sections 9 and 10 and corresponding regulations apply to species listed as endangered, they may be applied to threatened species as well, pursuant to section 4(d) of the ESA. Section 4(d) provides that the Secretary issue such regulations as deemed necessary and advisable to provide for the conservation of such species. For example, for those threatened species whose taking is prohibited by NMFS (such as salmon (50 CFR 227.21) and Guadalupe fur seal (50 CFR 227.11)), NMFS has promulgated special regulations that allow incidental takings of such species in compliance with a section 10 incidental take permit. Although NMFS has extended the section 9 takings prohibitions to threatened sea turtles (50 CFR 227.71(a)), the exceptions to the prohibitions contained in 50 CFR 227.72 do not provide for the issuance of an incidental take permit. This rule, as proposed, would make it possible to issue such permits for the taking of threatened sea turtles.

The extension of the section 10 incidental take permit exception to threatened sea turtles would allow the same substantive protective measures that can be implemented, and the same fishing activities that can be carried out, as under the current regulatory framework, while eliminating the procedural shortcomings of the regulatory framework, such as the short duration of the rules and the length of time required to issue rules. Incidental take permits are not intended to undermine the TED-use requirement or the taking prohibition in general. Furthermore, the regulatory framework would remain in effect for any entity that has not been issued an incidental take permit. This proposed rule would provide an additional means whereby non-Federal entities can engage in commercial fishing practices while affording adequate protection to both endangered and threatened sea turtles.

Through the implementation of this proposed rule, NMFS would accept and consider incidental take permit applications from non-Federal entities, such as individuals, businesses, municipalities, fishery organizations and state agencies. NMFS anticipates that it would invite state agencies, which are responsible for regulating state fisheries, to apply for general permits that would cover specific fisheries known or believed to incidentally take threatened or endangered sea turtles. This would be more efficient than requiring permits for individual vessels. It would also allow the states to assume management of fisheries through the permits, which are limited to activities within the territorial sea.

The general permit procedures in 50 CFR part 220, as well as the endangered species permit requirements in 50 CFR part 222, would apply to the application, issuance, modification, revocation, suspension and amendment of an incidental take permit for threatened, as well as for endangered sea turtles.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This requirement has been approved previously by the Office of Management and Budget (OMB Control Number 0648–0230). The reporting burden for this collection is estimated to average approximately 80 hours for permit applications, 0.5 hours for certificate of inclusion applications and 0.5 hours for reports. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR), 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: Paperwork Reduction Act Project 0648–0230).

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities because the proposed rule establishes a discretionary permitting procedure that will, by itself, have no economic impact on fisherman. As a result, a regulatory flexibility analysis was not prepared.

The AA prepared an EA for this proposed rule that concludes that the rule would have no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**) and comments on it are requested.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: July 13, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(1) introductory text is revised and paragraph (e)(7) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * * (1) *General.* The prohibitions against taking in § 227.71(a) do not apply to the incidental take of any member of any species of sea turtle listed in § 227.4 (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with the requirements of paragraphs (e)(1), (2), (3), and (6) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (e)(7) of this section.

* * * * *

(7) *Incidental take permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited in

§ 227.71(a) of this chapter in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the provisions of parts 220 and 222 of this chapter. Such permits may be issued for the incidental taking of both endangered and threatened species of sea turtles. This section supersedes restrictions on the scope of parts 220 and 222, including, but not limited to, the restrictions specified in §§ 220.3, 222.2(a) and 222.22(a).

* * * * *

[FR Doc. 94–17512 Filed 7–20–94; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 139
Thursday, July 21, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 736–4748, M/AS/ISS/RM, Room 930B, N.S., Washington, DC 20523.

Date Submitted: July 11, 1994
Submitting Agency: Agency for International Development
OMB Number: OMB 412–0520
Ford Number: AID 1420–17
Type of Submission: Renewal
Title: Information Collection Elements in the A.I.D. Acquisition Regulation (AIDAR)
Purpose: A.I.D. is authorized to make contracts with any corporation, international organization, or other body of persons in or out of the United States in furtherance of the purposes and within the limitations of the Foreign Assistance Act (FAA). Information collections and recordkeeping requirements place on the public by the A.I.D. Acquisition Regulation (AIDAR), are published as 48 CFR. The Contractor Employee Biographical Data Sheet, AID form 1420–17 is one of USAID's unique procurement requirements which contains preaward information.
Annual Reporting Burden: Respondents: 900, annual responses: 4500; hours per response: .5; annual burden hours: 2250
Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: July 10, 1994.

Elizabeth Baltimore,

Bureau of Management, Administrative Service, Information Support Services Division.

[FR Doc. 94–17717 Filed 7–20–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–070–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of May 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of May 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 15th day of July 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17777 Filed 7–20–94; 8:45 am]

BILLING CODE 3410–34–P

BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Bipartisan Commission on Entitlement and Tax Reform will hold a meeting on Monday, August 8, 1994 and 1 p.m. to 4 p.m. in the Cannon House Office Building, room 210, Washington, DC.

The meeting of the Commission shall be open to the public. The proposed agenda includes a discussion and possible adoption of or vote on Commission findings on the magnitude of long-range fiscal problems raised by current trends in federal spending and revenue patterns.

Records shall be kept of all Commission proceedings and shall be available for public inspection in room 825 of the Hart Senate Office Building, 120 Constitution Avenue, NE., Washington, DC 20510.

J. Robert Kerrey,

Chairman.

John C. Danforth,

Vice-Chairman.

[FR Doc. 94–17701 Filed 7–20–94; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Investment Plans Survey (Formerly Plant and Equipment Expenditures Survey).

Form Number(s): IP–1, IP–2.

Agency Approval Number: 0607–0641.

Type of Request: Revision of a currently approved collection.

Burden: 44,000 hours.

Number of Respondents: 30,000.

Avg Hours Per Response: 42 minutes.

Needs and Uses: The Bureau of the Census proposes to replace the Plant and Equipment Expenditures Survey (P&E) with a new economic indicator survey called the Investment Plans Survey (IPS) which will have close connection to the Annual Capital Expenditures Survey (ACES) (OMB approval number 0607–0782). The reasons for replacing the P&E are: 1) to improve the quality of the economic indicator of investment plans, 2) to improve consistency and definition of investment data, and 3) to simplify respondent reporting. The IPS will provide an early estimate of investment in structures and equipment for the year ending and an indicator of planned investment for the upcoming year. The Federal Reserve Board, the Council of Economic Advisors, and the Bureau of Economic Analysis are among the principal data users. We plan to replace the P&E with this new survey beginning in November 1994. At that time we will collect actual expenditure data for 1994 and planned spending for 1995.

Affected Public: Businesses or other for–profit organizations and non–profit institutions.

Frequency: Semi–annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–17787 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Single Audit Questionnaires.

Form Number(s): SAC–1, SAC–2.

Agency Approval Number: 0607–0518.

Type of Request: Revision of a currently approved collection.

Burden: 28,400 hours.

Number of Respondents: 100,000.

Avg Hours Per Response: 17 minutes.

Needs and Uses: The Single Audit Act of 1984 and OMB Circulars A–128 and A–133 require state and local governments and institutions of higher education and other non–profit institutions receiving $100,000 or more in Federal financial aid to have an annual audit of their financial operations. OMB has designated the Census Bureau as the central clearinghouse for these audits. We use the Single Audit Questionnaires to contact those entities that have not sent in their audit reports to request that they forward the report or clarify their reporting status. Information on the reporting status of non–profit institutions was collected on a one–time basis during FY 1991. This activity was not funded during Fiscal Years 1992 and 1993 but will be reinstituted for 1994.

Affected Public: State or local governments and non–profit institutions.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–17788 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–07–F

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 06/15/94–07/15/94

Firm Name	Address	Date petition accepted	Products
Chicago Weaving Corporation .	5900 N. Northwest Highway, Chicago IL 60631.	06/16/94	Woven table linens
Metal Form, Incorporated	19420 Eighty-Fourth Ave. South, Kent, WA 98032.	06/16/94	Aluminum parts.
Hatch & Kirk, Incorporated	5111 Leary Avenue Northwest, Seattle, WA 98107–4820.	06/20/94	Rebuilt diesel engines.
Delta Pet Incorporated dba For the Birds.	140 Lewis Road, #5, San Jose, CA 95111.	06/20/94	Bird toys.
Comstock Castle Stove Company.	119 W. Washington, Quincy, IL 62301.	06/22/94	Commercial gas cooking equipment.
Titan Corporation (The)	3033 Science Park Road, San Diego, CA 92121.	06/22/94	Militarized computers.
Breton Industries, Inc	One Sam Stratton Road, Amsterdam, NY 12010.	06/27/94	Custom vehicle covers, straps, cushions and seat belts.
Omak Wood Products, Inc	729 South Jackson, Omak, WA 98841.	06/27/94	Plywood and dimension lumber.
Applied Microsystems Corporation.	5020 148th Avenue Northeast, Redmond, WA 98052.	07/01/94	In-circuit emulation unit.
Rempac Foam Corporation	61 Kuller Road, Clifton, NJ 07015.	07/01/94	Paint and varnish brushes, pads and rollers and household and toilet articles made of foam.
EPE Corporation	540 North Commercial St., Manchester, NH 03101.	07/01/94	Wire wrapping, surface mount placement, lynx locater machine and feeders and spare parts.
Emanuel Equipment/EE Assembly.	214 Commercial Street, Sunnyvale, CA 94086.	07/01/94	Tooling for semiconductor packaging and semiconductor packages.
Oconee Machine & Tool Company, Inc.	2319 Sandifer Boulevard, Westminster, SC 29693.	07/06/94	Metal products—parts for grinders, metal drilling and reaming machines, etc.
Data I/O Corporation	10525 Willows Road Northeast, Redmond, WA 98073.	07/06/94	Misc.—programming systems, data I/O software & computer software.
Custom Alloy Corporation	3 Washington Avenue, High Bridge, NJ 08829.	07/06/94	Metal products—high pressure butt weld fitting of stainless steel and various alloy steels.
Akko, Inc	300 Canal Street, Lawrence, MA 01840.	07/06/94	Furniture—acrylic accent tables, chairs, TV carts, bath accessories, etc.
Aardvark Corporation	1415 Meridian East, Puyallup, WA 98371–0193.	07/07/94	Misc.—plastic ground water pipe, miscellaneous drill tools and pipe accessories.
American Fuel Cell and Coated Fabric Company.	601 Firestone Drive, Magnolia, AR 71753.	07/07/94	Misc.—rubber coated fabric storage tanks for liquids or dry powders.
Alperin, Inc	1 Maxson Drive, Old Forge, PA 18518.	07/07/94	Apparel—men's & boys' pants.
Standard Steel & Wire Corp	2450 West Hubbard, Chicago, IL 60612.	07/07/94	Metal products—cold-rolled & coated steel coils and cold-rolled and coated steel straight lengths.
Smokaroma, Inc	P.O. Box 25, Boley, OK 74827	07/07/94	Electronics—electric cooling plates/griller, pressurized B-B-Q smokers.
J. Telhos, Inc	126 Shove Street, Fall River, MA 02723.	07/08/94	Apparel—women's blazers of wool, wool blends, cotton, linen, polyester.
Seneca Falls Technology Group.	314 Fall Street, Seneca Falls, NY 13148.	07/08/94	Mach. & equip.—turning machines/horizontal lathes, metal components for machines and small tools.
American Tanning & Leather Co.	312 W. Solomon Street, Griffin, GA 30223.	07/14/94	Tanned reptile skins.
Source Turnkey Assembly & Test, Inc.	22118 20th Ave. SE., Suite 140, Bothell, WA 98021.	07/14/94	Printed circuit assemblies.
L & J Holding Company, LTD ..	6511 Oakton Street Morton Grove, IL 60053.	07/14/94	Level gauges.
Ryeson Corporation	3203 North Wolf Road, Franklin Park, IL 60131.	07/15/94	Torque wrenches, torque limiting screwdrivers and heads for torque wrenches.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total.or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 15, 1994.

Daniel F. Harrington,

Director, Trade Adjustment Assistance Division.

[FR Doc. 94–17790 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 94–0004.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Allegheny Highland Hardwoods, Inc. ("AHH") on July 13, 1994. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

DESCRIPTION OF CERTIFIED CONDUCT:

Export Trade

1. Products

Forest products, including but not limited to, hardwood lumber (SIC 2421); S4S dimension, solid squares, laminated squares, furniture blanks, flooring and dowels (SIC 2426); and molding and panels (SIC 2431); but excluding paper, cardboard, containerboard and similar products.

2. Export Trade Facilitation Services (As They Relate to the Export of Products and Services)

All export trade facilitation services including, but not limited to, professional services in the areas of government relations, foreign trade and business protocol, marketing, marketing research, negotiations, shipping, export management, documentation, insurance and financing.

Export Markets

The export markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.)

Export Trade Activities and Methods of Operation

To engage in export trade in the export markets, as an export trade intermediary, AHH, Inc. and/or its Members may:

1. Enter into exclusive or non-exclusive agreements wherein AHH agrees to act as the Members' Export Intermediary. Exclusive agreements are those wherein AHH agrees not to represent entities other than the Members in the sale of Products and provision of Export Trade Facilitation Services in any Export Market.

2. Meet to negotiate and agree on the terms of participation in each bid, invitation, or request to bid, or other sales opportunity in any Export Market, including, but not limited to, the price at which a Member will sell its Products for export, and the quantity of Products each Member will commit to the foreign sale or bid opportunity. During the course of such meetings, the following information may be exchanged:

a. Information that is generally available to the trade or public;

b. Information that is specific to a particular Export Market, including but not limited to reports, and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications;

c. Information on expenses specific to exporting to a particular Export Market, including, but not limited to, ocean freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing;

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market;

e. Information on AHH's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, consultation with prospective foreign customers, and reports by foreign sales representatives;

f. Information on each Member's ability to supply Products in a timely fashion pursuant to a specific export order.

3. AHH may enter into exclusive or non-exclusive agreements with other Export Intermediaries for the sale of Products in the Export Markets. Exclusive agreements are those wherein the Export Intermediary agrees to represent only AHH and/or its Members in the sale of Products and to provide Export Trade Facilitation Services only to AHH and/or its Members.

4. AHH may enter into exclusive agreements with foreign customers of Products offered by AHH whereby the customer agrees not to purchase Products from entities other than AHH.

5. AHH's may discuss and agree with AHH's Members and/or Export Intermediaries with which AHH has entered into agreements pursuant to paragraph 3 above on export prices to be charged by AHH, AHH's Members, or such Export Intermediaries.

6. AHH may limit its membership.

7. AHH may publish and distribute a list of export prices for Products to be charged by AHH, AAH's Members, and Export Intermediaries with which AHH has entered into agreements pursuant to paragraph 3 above.

8. AHH may allocate orders for export sales, and divide profits from such sales among AHH's Members as provided in the membership agreement between AHH and AHH's Members.

9. AHH and/or AHH's Members may forward to the appropriate individual Member requests for information received from a foreign government or the foreign government's agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs); and if such individual Member elects to respond, the Member shall respond directly to the requesting foreign government or the foreign government's agent with respect to such information.

Terms and Conditions of Certificate

1. Except as expressly authorized in paragraph 2(c) of the Export Trade Activities and Methods of Operation, in engaging in such Export Trade Activities and Methods of Operation neither AHH nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information about its or any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods unless (i) such information is already generally available to the trade or public; or (ii) the information

disclosed is a necessary term or condition (e.g. price, time required to fill an order, etc.) of an actual or potential *bona fide* sale and the disclosure is limited to the prospective purchaser.

2. AHH and its Members will comply with requests made by the Secretary of commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Member* means a person who has a membership in Allegheny Highland Hardwoods, Inc. and who has been certified as a *Member* within the meaning of § 325.2(1) of the Regulations.

Protection Provided by the Certificate

This Certificate protects AHH, its Members, and directors, officers, and employees acting on behalf of AHH and its Members, from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits AHH and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to AHH by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of AHH or its Members or (b) the legality of such business plans of AHH or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)", 50 Fed. Reg. 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

EFFECTIVE DATE: July 13, 1994.

Dated: July 15, 1994.

W. Dawn Busby,

Director, Office of Trading Company Affairs.

[FR Doc. 94–17725 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DR–P

Revocation of Antidumping Duty Order on Photo Albums and Photo Album Filler Pages From Hong Kong (A–582–501)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping duty order on photo albums and photo album filler pages from Hong Kong because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: David Levy or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 68391) its notice of intent to revoke the antidumping duty order on photo albums and photo album filler pages from Hong Kong (December 16, 1985).

Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided 30 days to submit their comments.

Scope of the Order

Imports covered by the revocation are shipments of photo albums and photo album filler pages from Hong Kong. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 3920.00.00, 3921.00.00, 3926.90.00, 4819.50.00, 4820.50.00, 4820.90.00, and 4823.90.00. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR § 353.25(d)(4)(iii)).

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on photo albums and photo album filler pages from Hong Kong is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR § 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of photo albums and photo album filler pages from Hong Kong entered, or withdrawn from warehouse, for consumption on or after December 1, 1993. Entries made during the period December 1, 1992, through November 30, 1993, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn

from warehouse, for consumption on or after December 1, 1993, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: July 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–17791 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–247–003]

Revocation of Antidumping Finding on Portland Cement From the Dominican Republic

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping finding on portland cement from the Dominican Republic because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Fargo or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 22822) its notice of intent to revoke the antidumping finding on portland cement from the Dominican Republic (May 4, 1963).

Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

Scope of the Order

Imports covered by the revocation are shipments of portland cement from the Dominican Republic. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 2523.29.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR § 353.25(d)(4)(iii)).

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on portland cement from the Dominican Republic is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR § 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of portland cement from the Dominican Republic entered, or withdrawn from warehouse, for consumption on or after May 1, 1994. Entries made during the period May 1, 1993, through April 30, 1994, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered or withdrawn from warehouse, for consumption on or after May 1,1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: July 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–17792 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–086]

Revocation of the Antidumping Duty Order on Spun Acrylic Yarn From Japan

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping duty order on spun acrylic yarn from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Ann Ngo or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 23051) its notice of intent to revoke the antidumping duty order on spun acrylic yarn from Japan (April 8, 1980).

Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided 30 days to submit their comments.

Scope of the Order

Imports covered by the revocation are shipments of spun acrylic yarn from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 5509.32.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on spun acrylic yarn from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR § 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of spun acrylic yarn from Japan entered, or withdrawn

from warehouse, for consumption on or after April 1, 1994. Entries made during the period April 1, 1993, through March 31, 1994, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: July 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–17793 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 071394A]

National Marine Fisheries Service Organization Review

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS has undertaken a review of the agency's management and organization. The objective of the review is to improve NMFS's ability to meet the agency's mission most efficiently and effectively. This notice solicits the comments and suggestions of the fishing industry, conservation groups, knowledgeable members of the public, and others who would like to make a contribution to the review based on their knowledge and experience of NMFS and its programs. The intent of the notice is to increase the comprehensiveness and validity of the review by obtaining additional information on a voluntary basis from knowledgeable individuals.

DATES: Comments and suggestions must be received by August 5, 1994.

ADDRESSES: Comments and suggestions should be directed to: Lynne Carbone and Associates, 7013 Fawn Trail Court, Bethesda, MD 20817. Please mark the mailing envelope clearly with "Management Review Comments."

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, (301) 713–2239.

SUPPLEMENTARY INFORMATION: Comments are requested on the following questions:

1. What does NMFS do as an organization that seems to go well? How is NMFS effective as an organization?
2. What does NMFS do as an organization that does not go well? Where/how is NMFS not effective?
3. If you could change anything about the organization and how NMFS operates, what would you change and how?

The review will give priority attention to responses to the above questions, but will also consider other comments that are submitted.

Dated: July 14, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–17706 Filed 7–15–94; 4:31 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber and Silk-blend and other Non-Cotton Vegetable Fiber Textile Products Produced or Manufactured in The People's Republic of China

July 18, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 18, 1994, you are directed to amend further the directive dated January 24, 1994 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and The People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
334	320,218 dozen.
359–V	846,178 kilograms.
611	5,338,909 square meters.
847	1,294,406 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17764 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

The National Futures Association's Proposed Requirements for Break-Even Analyses in Commodity Pool Disclosure Documents

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On June 15, 1994, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on the National Futures Association's ("NFA's") proposed amendment and Interpretive Notice to its Compliance Rule 2–13. 59 FR 30775 (June 15, 1994). The proposal would establish requirements regarding the use of break-even analyses in commodity pool disclosure documents. The original comment period expires on July 15, 1994.

By letter to the Commission dated July 11, 1994, the Managed Futures Association ("MFA") requested a thirty-three-day extension of the comment period to August 17, 1994. The MFA indicated that it had been meeting with its members frequently to consider the issues presented by the NFA's proposal. The MFA further indicated that that consultative process was continuing and that it believed that significant responsive comments were being developed.

Acting pursuant to the authority delegated by Commission Regulation 140.96(b), the Director of the Division of Trading and Markets ("Division") has determined that an extension of the period for the request for public comments on NFA's proposal is in the public interest and will assist the Commission in considering the view of interested persons. In order to ensure that all interested persons have an adequate opportunity to submit meaningful comments, the Division, on behalf of the Commission, is extending the comment period for an additional thirty-three days.

DATES: The comment period will remain open through August 25, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, DC, on July 15th, 1994, by the Commission.

Andrea M. Corcoran,

Director.

[FR Doc. 94–17697 Filed 7–29–94; 8:45 am]

BILLING CODE 6351–01–M

The National Futures Association's Proposed Restriction on the Use of Hypothetical Trading Results in Promotional Materials

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On June 15, 1994, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on the National Futures Association's ("NFA's") proposed amendment and Interpretive Notice to its Compliance Rule 2–29. 59 FR 30776 (June 15, 1994). The proposal would establish restrictions on the use of hypothetical trading results in promotional materials. The original comment period expires on July 15, 1994.

By letter to the Commission dated July 11, 1994, the Managed Futures Association ("MFA") requested a thirty-three-day extension of the comment period to August 17, 1994. The MFA indicated that it had been meeting with its members frequently to consider the issues presented by the NFA's proposal. The MFA further indicated that that consultative process was continuing and that it believed that significant responsive comments were being developed.

Acting pursuant to the authority delegated by Commission Regulation 140.96(b), the Director of the Division of Trading and Markets ("Division") has determined that an extension of the period for the request for public comments on NFA's proposal is in the public interest and will assist the Commission in considering the view of interested persons. In order to ensure that all interested persons have an adequate opportunity to submit meaningful comments, the Division, on behalf of the Commission, is extending the comment period for an additional thirty-three days.

DATES: The comment period will remain open through August 25, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, D.C. on July 15th, 1994 by the Commission.

Andrea M. Corcoran,

Director.

[FR Doc. 94–17698 Filed 7–20–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Plan for Compliance With Regulation 5 of Annex V to the MARPOL Convention

AGENCY: Department of the Navy, DOD.

ACTION: Notice

SUMMARY: DON is announcing the preparation of a plan for the compliance of all ships owned or operated by the Navy with the requirements of Regulation 5 of Annex V to the MARPOL Convention. The DON will consult with the Secretary of State, the Secretary of Commerce, the Secretary of Transportation and the Administrator of the Environmental Protection Agency on the special area compliance plan and solicits public participation and comment on the special area compliance plan. In order to obtain and consider public comments on the Navy's compliance with the MARPOL requirements, the Navy will host a public meeting prior to preparing the special area compliance plan.

DATES: The meeting will take place on September 20, 1994, at 9:00 a.m.

ADDRESSES: The meeting will be held in the main auditorium (Building Number 19) at the Naval Surface Warfare Center, Carderock Division, Carderock, MD.

FOR FURTHER INFORMATION CONTACT: For further information on the public meeting, contact Ms. Linda Dulin at (410) 293–3513. For information on the DON special area compliance plan for MARPOL compliance or to submit comments, contact the Officer in Charge, Naval Surface Warfare Center, Carderock Division, Annapolis Detachment, 3A Leggett Circle, Annapolis, MD 21402–6067 (Attn: Code 634A). The meeting will be conducted in English and will include oral briefings and visual displays. Members of the public who need additional assistance to participate should contact

Ms. Dulin as soon as possible to make arrangements.

SUPPLEMENTARY INFORMATION: The United States Navy has explored ways to comply with restrictions on the discharge into the ocean of solid waste generated aboard its ships. The basis for the restrictions, the Navy's efforts to comply and its strategy for achieving future compliance are set out below.

Restrictions on Discharge of Solid Waste at Sea

The United States is a party to the International Convention on Prevention of Pollution from Ships, 1973, S. Treaty Doc. No. 3, 100th Cong., 1st Sess. (1987). The 1973 Convention was amended by the MARPOL Protocol in 1978, 17 I.L.M. 546 (1978), and the combination is frequently referred to as MARPOL 73/78. MARPOL 73/78 protects the ocean environment by prohibiting some discharges altogether, restricting other discharges to particular distances from land, and establishing "special areas" within which additional discharge limitations apply. MARPOL 73/78 deals with particular types of discharges in five annexes. Annex V addresses discharge of garbage from ships. MARPOL 73/78 was implemented for the United States in the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901 *et seq.* Annex V has been implemented for the U.S. by the Marine Plastic Pollution Research and Control Act (MPPRCA), Pub. L. No. 100–220, 101 Stat. 1460 (1987), *codified at* 33 U.S.C. 1901 *et seq.*, and section 1003 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103–160, 107 Stat. 1745 (DAA–94).

MARPOL 73/78 provides enhanced protection to particular bodies of water, designated "special areas," because their oceanographic characteristics and ecological significance requires protective measures more strict than other areas of the ocean. The stricter requirements become applicable once the International Maritime Organization declares that the special areas are "in effect" after determining that the littoral countries have sufficient capacity to handle wastes from ships.

The international community has long recognized that the characteristics of warships pose special problems for strict compliance with MARPOL 73/78, which reasonably focuses on civilian vessels which are far more prevalent than warships on the world's oceans. Article 3 of MARPOL 73/78 recognizes the special nature of warships by exempting them from strict compliance with the provisions of the Convention. It provides that the Convention:

> [S]hall not apply to any warship, naval auxiliary or other ship * * *. Each Party shall ensure by the adoption of measures not impairing the operational capabilities of such ships * * * that such ships act in a manner consistent, so far as is reasonable and practicable.

For U.S. public vessels, implementation of MARPOL 73/78 generally preserves the sovereign immunity of warships and public vessels, excluding them from strict application of the standards but requiring the Secretary of Defense to prescribe regulations ensuring "so far as is reasonable and practicable without impairing the operations or operational capabilities" of the ships that they act "in a manner consistent with the MARPOL Protocol." *See* 33 U.S.C. 1902(b) and (d). As required by MARPOL 73/78 and APPS, 33 U.S.C. 1901 *et seq.*, the Navy has prescribed discharge limits and operational practices for Navy ships that are at least as protective as those required under MARPOL 73/78 under most circumstances. Under the MPPRCA, however, Navy ships were required to come into full compliance with the requirements of Annex V of MARPOL 73/78. Under the MPPRCA, the Navy was to come into full compliance with Annex V to MARPOL 73/78 by January 1, 1994 or to notify Congress if it was unable to comply.

Navy Compliance Efforts

Since the early 1980's, the Navy has been developing technological means to eliminate or mitigate discharge of solid waste from its ships. Through a combination of material substitution, source reduction and management practices, for example, the discharge of plastic waste was cut by over 70 percent. The Navy also pursued development of other technology to help manage solid waste at sea. By 1993, the Navy had installed equipment and imposed procedures to fully comply with MARPOL restrictions on non-plastic waste everywhere but in special areas, and had achieved an estimated 70 percent compliance with restrictions on plastic waste. In addition, the Navy developed new technology that, when finally procured and installed, will allow Navy surface ships to come into full compliance with restrictions on discharge of plastic waste.

Concurrent with the technical studies, the Navy engaged numerous stakeholders in a dialogue in which the Keystone Center acted as a facilitator. The stakeholders included Federal and state agencies, Congressional staff, and environmental groups. The dialogue allowed the Navy to provide information to the participants about the special problems it faces in continuing military operations on the world's oceans while still complying with restrictions on the discharge of solid waste. The Navy was also better able to understand the concerns and interests of the representative stakeholders on the subject.

The Navy reported its efforts at managing shipboard solid waste in "U.S. Navy Compliance with the Marine Plastic Pollution Research and Control Act of 1987" (June 1993). Congress responded by extending the original deadlines in the MPPRCA. As required by section 1003(a) of the DAA–94, surface ships must eliminate all discharges of plastics by December 31, 1998 and must comply with limits on discharges of other solid waste in special areas that are "in effect" by December 31, 2000. Submarines must comply with both requirements by December 31, 2008.

Plan for Compliance in Special Areas

The Navy has identified the solution to the problem of plastic discharges from surface ships and is working hard on a solution for submarines. Strict compliance with all requirements for discharges of nonplastic solid waste in special areas, however, presents a larger problem because of the nature of the waste stream and the military mission of warships. Regulation 5 of Annex V pertains to discharges in special areas and prohibits discharges of solid wastes, other than food wastes. Although the Navy has made important strides in studying the shipboard waste stream, in developing management strategies, and in developing equipment that can mitigate the effects of solid waste discharges, the Navy has not identified a final solution that would eliminate all non-food discharges in special areas. Recognizing the difficulty in achieving strict compliance with all requirements of Annex V, in section 1003(b) of the DAA–94, Congress required the Navy to prepare a plan for compliance with the requirements of Regulation 5 under Annex V. The special area compliance plan must be submitted to Congress by November 30, 1996. If the special area compliance plan demonstrates that full compliance with all the requirements of Regulation 5 of Annex V is not technologically feasible in the case of certain ships under certain conditions, it must include the following information:

a. The ships for which full compliance is not technologically feasible;

b. the technical and operational impediments to achieving such

compliance as rapidly as is technologically feasible; and

c. such other information as the Secretary of the Navy considers relevant and appropriate.

In accordance with DAA–94 and to ensure the broad public understanding of the problem, the Navy will consult with the Secretary of State, the Secretary of Commerce, the Secretary of Transportation and the Administrator of the Environmental Protection Agency as it prepares the special area compliance plan. The Navy will also provide the opportunity for public participation in preparation of the special area compliance plan, including public review and comment. This notice is provided to inform the public that preparation of the special area compliance plan is beginning and to solicit public comments on the scope of the studies to be planned and the alternatives to be studied.

Navy Mission and Resource Constraints

Any solution to the Navy's solid waste problem in special areas must consider the types of missions that the Navy is directed to carry out in special areas and the constraints and challenges inherent in operating warships at sea. These considerations include the following:

The Navy must be prepared to carry out duties assigned by the President to protect the nation's interests around the world. Most of the designated special areas include locations of great strategic and economic interest, including the Mediterranean Sea, the Red Sea, the Persian Gulf, the Gulf of Mexico, the North Sea and the Baltic. Navy missions in such areas often require that ships remain on station at sea for prolonged periods of time. For example, surveillance and tracking missions for drug interdiction or for enforcement of economic sanctions would be compromised if ships were required to leave station and steam to port to offload waste. For another example, Naval ships maintaining combat air patrol over a crisis area like Bosnia often must remain on station at sea for months at a time to prevent a break in coverage. Navy ships have also often been ordered to remain for weeks or months off the coast of nations in turmoil so that U.S. forces can evacuate U.S. citizens if necessary. In other circumstances, Navy ships may be required to remain offshore to provide access to sophisticated medical care in case of injury or wounding of peacekeeping troops. Some Navy ships, especially submarines, necessarily must operate without underway logistic support from other Navy ships. Thus, the special area compliance plan must consider any impacts that it may impose on mission effectiveness and operational flexibility.

The special area compliance plan must be compatible with warship design. Navy ships are designed to maximize their ability to perform their missions, especially combat missions. Ships are self-contained units with severe limits on space, weight and power requirements for their equipment. While naval architecture and ship design always require compromise among competing priorities, Navy ships must be equipped, manned and constructed to function effectively and survive in far more rigorous circumstances than commercial ships. Navy ships must devote considerable space and weight to specialized combat systems equipment and damage control features. They have far larger crews than commercial vessels because more systems must be operated, and most routine equipment maintenance must be done by the ship's crew at sea.

Many classes of Navy ships are already classified as "space and weight critical," which means that any equipment added to the ship (for example, to manage solid waste) must be compensated for by removing other equipment already devoted to some other portion of the ship's mission. Many ships also have only modest additional power available to drive additional equipment and would have to turn off other important systems to use a waste control system with high power requirements. Thus the Navy's special area compliance plan must carefully address the size, weight and power requirements of any additional equipment.

The crew size on Navy ships, an important factor in determining the size of the waste stream, varies tremendously. Submarines have crews of approximately 120. Cruisers have crews of approximately 380. Large amphibious ships have crews of approximately 2000. Aircraft carriers have crews approaching 6000. The Navy's special area compliance plan must address solutions that can be adapted successfully to several different capacities.

Because they operate independently in a dynamic, often physically hostile marine environment, Navy ships and the equipment on them must be designed to withstand stresses and operating conditions not encountered on shore. The Navy has experienced difficulty with some "off the shelf" equipment not specifically designed for shipboard use. Shipboard equipment must also be reliable, maintainable by Navy crews, and capable of being logistically supported by the Navy supply system. The Navy's special area compliance plan must address reliability and maintainability of any new equipment in a marine environment.

The Navy faces a fiscal environment where many meritorious programs must compete for a declining total amount of resources, in terms of both funding and personnel. Development, acquisition, installation and operation of new equipment, therefore, must be cost efficient. The Navy's special area compliance plan must address the resources needed to implement it.

For the reasons discussed above, to be feasible for use by the Navy for vessels throughout the fleet, equipment or strategies to implement an alternative must balance operational, design, cost, and environmental considerations in the same manner that equipment designed for propulsion, communications, weapons or other shipboard functions are evaluated. The criteria normally considered by the Navy for shipboard systems include those set out in the Appendix to this notice.

Alternatives To Be Studied

In developing the special area compliance plan, the Navy proposes to analyze three different categories of alternatives. The first two categories would ensure full compliance with Regulation 5 under Annex V. The third alternative would not ensure full compliance with Regulation 5 under Annex V, but may preserve many or all of the environmental values protected by Regulation 5 in the event that full compliance is not feasible. The Navy remains committed to full compliance, but is taking this opportunity to increase the information available on ways to mitigate discharges in special areas. The Navy will also analyze combinations of the technologies from the distinct alternatives. The general categories of alternatives are:

On Board Destruction of Waste Alternative

This category of alternatives focuses on technologies that result in virtually complete destruction of waste aboard the vessel. These might include incineration or more technologically advanced thermal destruction. Study of these technologies would include study of the proper handling of any residue as well any safety concerns and cross media pollution.

Store and Retrograde Waste Alternative

The second category of alternatives focuses on technologies that permit storage and retrograde of waste, either on board the generating ship or by service force ships. These would include study of refrigeration, compaction, odor barrier bags and other means to facilitate storage and retrograde of waste for disposal on shore.

Process Solid Waste Until It Is "Environmentally Benign" and Discharge Alternative

The third category of alternatives focuses on technologies that are designed to process waste to produce an effluent that is environmentally benign if discharged to the sea. The study of this alternative would also include fate and effect studies of the discharge and the relative effect of such discharges in comparison to other discharges from land or sea sources.

Public Participation

The Navy solicits public input to the special area compliance plan. Among other topics, public comments could address the scope of the alternatives to be considered, the studies considered necessary, the measures of merit by which to evaluate the alternatives, and suggested technologies or strategies for compliance. As described above, the Navy will hold a public meeting to obtain and consider public comments on the Navy's compliance with the MARPOL requirements. Members of the public are invited to attend.

Following the public meeting the Navy will analyze the alternatives (including combinations of the alternatives), conduct required research and prepare a draft special area compliance plan. Comments should be submitted in writing to the Officer in Charge, Naval Surface Warfare Center, Carderock Division, Annapolis Detachment, 3A Leggett Circle, Annapolis, MD 21402–6067 (Attn: Code 634A) in time to be received not later than 30 days after the date of the public meeting. The Navy expects to formally consult with the other concerned agencies on the draft special area compliance plan in late 1995 and to make the draft special area compliance plan available for public comment in Spring, 1996. After public review and comment, the Navy will submit the plan to Congress.

Appendix—Equipment Suitability Considerations

1. Installation feasibility
   a. Back fitting existing vessels
   b. Design in new vessels
2. Performance (adapted to waste management equipment)
   a. Throughput or processing capacity
   b. Pitch and roll sensitivities
   c. Flexibility in handling various blends of wastes
   d. Resulting waste products and/or residues
   e. Ability to handle classified documents
3. Space and physical support requirements
   a. Floor space (footprint)
   b. Height
   c. Volume
   d. Requirement for multi-deck installation
   e. Supporting hardware
   f. Staging/stowage area for supplies or raw material
4. Shipboard load/stability factors
   a. Absolute weight
   b. Center of gravity/moment as installed on ship
5. Reliability
   a. Mean time between critical failures (MTBCF)
   b. Types of failures (critical, noncritical, discrepancies, persistent)
   c. Qualitative assessment of impact on crew
   d. Effects of heat, humidity, ocean climate and shipboard vibration
6. Maintainability (at sea)
   a. Preventive maintenance requirements
   b. Mean Time to Repair (MTTR)
   c. Mean Logistics Delay Time (MLDT); average time to get spare parts
   d. Maximum Allowable Time to Make Repairs (Mmax)
7. Staffing
   a. Number of manhours required for operation
   b. Availability of required skills aboard ship
   c. Training requirements
8. Compatibility with military mission
   a. Electromagnetic radiation
   b. Electronic/electrical interference
   c. Acoustic signature
   d. Visible emissions
9. Interoperability with other shipboard systems
10. Survivability in a marine/combat environment
11. Logistics support
   a. Availability or repair parts
   b. Technical data and maintenance requirements
   c. Supply support
   d. Support equipment (e.g., special tools)
   e. Spares and consumables requirement
12. Safety and Health considerations
   a. Noise levels produced
   b. Fire/explosion hazards
   c. Chemical/biological hazards
   d. Odor production
   e. Temperature of equipment/system surfaces and contribution to ship heating/cooling load
   f. Physical hazards, including those associated with moving or rotating parts
13. Costs associated with:
   a. Research, development, test and evaluation (RDT&E)
   b. Procurement
   c. Installation
   e. Operation
   f. Logistic support.

Dated: July 15, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–17711 Filed 7–20–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by August 1, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: July 15, 1994.

Mary P. Liggett,

Acting Director, Information, Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Expedited

Title: Drug-Free Schools and Communities Safe Schools Act of 1994 Grants program

Abstract: This form will be used to evaluate the quality and utility of proposed activities in order to select competitively the applicants who will receive awards. The Department will use the information to satisfy regulatory requirements.

Additional Information: Clearance for this information collection is requested for August 1, 1994. An expedited review is necessary so that the program office can complete a schedule which will award grants in December 1994. Grantees will receive a single award to conduct activities for project periods of up to eighteen months. Eighteen month project periods allow grantees time during the present school year to conduct planning and start-up activities (such as hiring personnel) for the subsequent school year. During the 94–95 school year (FY 95) grantees can carry out the remainder of their approved activities as well as evaluate and disseminate project outcomes.

Frequency: Annually

Affected Public: State or local governments

Reporting Burden:

Responses: 500

Burden Hours: 14,000

Recordkeeping Burden:

Recordkeepers: 500

Burden Hours: 10,000.

[FR Doc. 94–17733 Filed 7–20–94; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 22, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 15, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: New

Title: Annual Report of Independent Living Services for Older Individuals Who Are Blind

Frequency: Annually

Affected Public: State or local governments

Reporting Burden:

Responses: 33

Burden Hours: 132

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form will be used to evaluate and monitor independent living services to older individuals who are blind related to the types of services provided and the number of persons receiving each type of service, and the amounts and percentages of funds reported on each type of service provided. The Department will use the information to report to Congress.

Office of Postsecondary Education

Type of Review: New

Title: Reporting and Recordkeeping Requirements for Teacher Shortage Cancellation Provisions for the Federal Perkins Loan Program

Frequency: Annually

Affected Public: Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions

Reporting Burden:

Responses: 57

Burden Hours: 57

Recordkeeping Burden:

Recordkeepers: 8,280

Burden Hours: 2,070

Abstract: The Chief State school officer of each state would be required to provide the Secretary annually with a list of proposed teacher shortage areas for that state unless they do not wish to make the cancellation available to teachers in that state. The Department will use the information as support for a cancellation/reduction in teaching obligations.

[FR Doc. 94–17734 Filed 7–20–94; 8:45 am]

BILLING CODE 4000–01–M

[CFDA NO: 84.176]

Paul Douglas Teacher Scholarship Program; Notice Inviting Applications for New Grants for Fiscal Year (FY) 1994.

Purpose of Program: To provide, through grants to States, scholarships to individuals who are outstanding secondary school graduates and who demonstrate an interest in teaching, in order to enable and encourage those individuals to pursue teaching careers in education at the preschool, elementary or secondary level.

Eligible Applicants: The 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Trust Territory of the Pacific Islands (Palau), and the Virgin Islands are eligible to apply for grants under this program.

Deadline for Transmittal of Applications: August 22, 1994.

Deadline for Intergovernmental Review: September 6, 1994.

Available Funds: $14,681,000.

Estimated Range of Awards: $1,230 to $1,746,057.

Estimated Average Size of Awards: $271,870.

Estimated Number of Awards: 54.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Budget Period: 12 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 653, as published in the **Federal Register** on August 11, 1993 (58 FR 42824); and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60–75.62 and 34 CFR Parts 76, 77, 79, 80, 82, 85, 86.

For Applications or Further Information Contact: Ms. Valerie A. Hurry, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–5329. Telephone: (202) 260–3392. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone number (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1104 to 1104k.

Dated: July 15, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–17712 Filed 7–20–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office; Financial Assistance Award; Air Conditioning and Refrigeration Technology Institute

AGENCY: Energy.

ACTION: Intent to award based on an unsolicited application.

SUMMARY: The Department of Energy announced that pursuant to the provisions of 10 CFR 600.14, it intends to provide additional funding and extend the budget period for Grant No. DE–FG02–91CE23810 based on an unsolicited application received from Air Conditioning and Refrigeration Technology Institute (ARTI) for Phase IV of the project, Materials Compatibility and Lubricant Research to Accelerate Introduction of CFC—Refrigerant Substitutes. The determination to extend this grant is based on the following information: A technical evaluation of the proposed project was performed pursuant to 10 CFR 600.14 (d) and (e). The proposed project assists DOE in carrying out its mission of seeking alternative refrigerants for Chlorofluorocarbons (CFCs) and Hydrochlorofluorocarbons (HCFCs) in refrigeration and insulation in an effort to reduce the deleterious effects of refrigeration chemicals on stratospheric ozone. ARTI has made available substantial and unique facilities and resources not available elsewhere. This includes considerable amounts of information that are proprietary to the member industries participating in the project. It is determined that the proposed project is meritorious in significantly improving the information data base upon which new refrigerants and lubricants can be selected, and refrigeration equipment can be designed to utilize these chemical compounds. The probability of success is extremely high due to the high level of industry participation and commitment to the effort, particularly cost sharing or in-kind support. The key personnel assigned to the project have capabilities critical to the accelerated development of alternative refrigerants and the refrigeration equipment required to effectively utilize these new chemical compounds. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is not considered suitable for competitive financial assistance. The DOE share of funding is estimated at $3,190,000 and ARTI's cost share is estimated at $226,493 for a two-year budget period estimated to be from September 30, 1994 through September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Gaile A. Higashi, U.S. Department of Energy, Chicago Operations Office, Contracts Division, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2383. Tanga R. Baylor, U.S. Department of Energy, Chicago Operations Office, Contracts Division, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2214.

Issued in Chicago, Illinois on July 12, 1994.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–17784 Filed 7–20–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance: Stone & Webster Engineering Corporation

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) and (D) it plans to negotiate Cooperative Agreement DE–FC07–94ID13303 with Stone & Webster Engineering Corporation, Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Linda A. Hallum, Contract Specialist, (208) 526–5545; U.S. Department of Energy, 850 Energy Drive, MS 1221, Idaho Falls, ID 83401–1563.

SUPPLEMENTARY INFORMATION: The objective of the project is continue tests to evaluate the supercritical water oxidation (SCWO) pilot plant developed under Cooperative Agreement DE–FC07–88ID12711. The pilot plant configuration was developed to treat corrosive wastes and waste with high solids content. DOE has no recent, current, or planned solicitations under which this proposal would be eligible. The activity to be funded is necessary to the satisfactory continuation of an activity funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the project. DOE and commercial implementation of SCWO technology will reduce the volume of

hazardous and mixed waste currently stored and generated in the United States. SCWO technology is recognized as a high potential alternative technology to incineration, providing cleaner effluents and with less institutional barriers than incineration. The award will be for one year at a total estimated cost of $700,000. Cost share is anticipated to be 10% of the project costs. Statutory authority for this award is Pub. L. 93–577, Federal Non-Nuclear Energy Research and Development Act of 1974. The Federal Domestic Catalog Number is 81.103.

Dated: July 11, 1994.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 94–17785 Filed 7–20–94; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, August 3, 1994: 7:00 p.m.–10:00 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 4255 South Paradise Road, Law Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, August 3, 1994

7:00 p.m.
- Call to Order
- Review Agenda
- Minutes Acceptance
- Financial Report
- Correspondence
- Reports from Committees, Delegates and Representatives
- Unfinished Business
- New Business
- Evaluation of Board and Environmental Restoration and Waste Management Programs
- Announcements

10:00 p.m. Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, August 3, 1994.

Public Participation

The meeting is open to the public. Written statements may be filed with the Commission either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the Federal Register notice is being published less than fifteen days before the date of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on July 18, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–17786 Filed 7–20–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 11346–001, IA]

FORIA Hydro Corp.; Environmental Assessment Scoping

July 15, 1994.

On March 28, 1994, the Federal Energy Regulatory Commission (Commission) issued a notice indicating that staff is ready to conduct an environmental analysis (REA Notice) for the proposed Fort Dodge Mill Dam Project, located on the Des Moines River, in Webster County, Iowa. The REA Notice also requested comments from federal, state, and local resource agencies, licensees and developers, Indian tribes, and any other interested groups (parties). Parties were given until May 28, 1994, to file comments.

The purpose of this notice is to advise all parties as to the scope of our environmental analysis and to seek additional information pertinent to this analysis. The scope as presented herein is based on the information filed with the Commission by FORIA Hydro Corporation (the Applicant), comments received from the parties thus far, and the staff's independent analysis.

Proposed Action

The Applicant proposes to install new generating equipment at an existing dam, reservoir and powerhouse to be called the Fort Dodge Mill Dam Project.

The proposed project would include the following features: (1) an existing dam 372 feet long and 18 feet high; (2) an existing impoundment with a surface area of 90 acres with a normal surface elevation of approximately 990 feet above mean sea level; (3) an existing powerhouse containing two new turbine-generator units at a total installed capacity of 1,260 kilowatts; and (4) a proposed 13.8-kilovolt transmission line.

In addition to the proposed two new turbine-generator units, the Applicant proposes install a new flat trashrack (with 2.75–3.5-inch clear bar spacing) above the project intake.

To enhance public recreation, the Applicant proposes to develop a new boat ramp at the Fort Dodge Park, located adjacent to proposed project.

The Applicant proposes measures relating to project operation to protect environmental resources in the project area. A 24-cubic feet per second minimum flow over the project dam is proposed to protect water quality and fishery resources in the downstream pool area and side channel. The project would be operated in a run-of-river mode, with only minor fluctuations in the headpond elevation to account for natural variations in river flow. In the operational plan for the Fort Dodge Mill Dam Project, the Applicant also proposes to implement a plan to verify run-of-river operation and a seasonal water quality monitoring program for the impoundment.

Project Alternatives

The Commission staff will consider alternatives, including enhancement measures not proposed by the Applicant. The staff will review and consider alternative recommendations for additional resource protection, or enhancement measures that may be appropriate to include in an original license. Modifications could include recommendations by the agencies, the general public, and the staff.

In addition to these alternatives, the staff will evaluate the no-action alternative, which maintains the existing environment or status quo at the project.

Scope of the Environmental Impact Statement

The geographic scope of analysis defines the physical limits or boundaries of the proposed actions' effects on the resources. Since the proposed actions affect each resource differently, the geographic scope for each resource varies. For fishery resources, flow analysis, water quality, flood control, and power, the geographic scope of analysis will encompass the mainstem Des Moines River.

The temporal scope includes a discussion of the past, present, and future actions and their effects on the resources. Based on the license term, the temporal scope will look 30 to 50 years into the future, concentrating on the effect on the resource from reasonably foreseeable future actions (e.g., the effect on water quality from potential future water withdrawals within the basin). The historical discussion will, by necessity, be limited to the amount of available information for each resource.

Environmental Issues

A preliminary list of environmental issues identified by the staff for coverage in an Environmental Assessment (EA) is presented in this section. The list is not intended to be exhaustive or final, but is an initial listing of issues that have been raised and appear to be important. The staff will review all issues raised during the scoping process and make decisions as to the level of analysis needed. If preliminary analysis indicates that any issues presented in this scoping document have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

The following issues apply to the Fort Dodge Mill Dam Project:

- An evaluation of the project's potential effect on dissolved oxygen (DO) downstream of the project and the need for additional studies of DO.
- Effects of project operation and non-project factors on vegetation and wildlife.
- Effects of project operation on any federally listed threatened or endangered species in the project area.
- Probability of eligibility of dam and powerhouse on the National Register of Historic Places.
- Opportunities for recreational facility improvements and public access enhancements.

The EA will assess the project-specific impacts on the above resources and whether these impacts contribute to significant adverse impacts. Both project-specific impacts and cumulative effects will weigh in selecting an action to recommend for the licensing decision on the project.

EIS Preparation Schedule

The preliminary schedule for preparing the EA for the Fort Dodge Mill Dam Project is:

Milestones	Target date
Public Scoping	Summer 1994.
Draft EA	September 30, 1994.
Final EA	November 30, 1994.

Request for Comments

The Commission's scoping objectives are to:

- identify significant environmental issues,
- determine the depth of analysis appropriate to each issue,
- identify the resource issues not requiring detailed analysis, and
- identify reasonable project alternatives.

Federal, state, and local resource agencies, licensees and developers, Indian tribes, other interested groups, and the general public are invited to forward to the Commission any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities on the Des Moines River. The types of information sought include:

- Information, quantified data, or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other environmental assessment, environmental impact statement, or similar document or study (previous, on-going, or planned) relevant to the proposed licensing activities in the Des Moines River Basin
- Existing information and any data that would aid in describing the past and present actions and effects of the projects and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat losses or proposals to develop land and water resources within the basin.
- Identification of any federal, state, or local resource plans and future project proposals that encompass the Des Moines River Basin with information on when they will be implemented, if known. For example, proposals to construct or operate water treatment facilities, recreation areas, water diversions, or implement fishery management programs.
- Documentation that would support a conclusion that the actions or a project(s) *does* or *does not* contribute to cumulative adverse or beneficial effects on resources and therefore should be excluded from further study or excluded from further consideration of cumulative effects within the Des Moines River Basin. Documentation should include, but is not limited to: how the projects interact with other projects within the river basin and other developmental activities; results from studies; resource management policies; and reports from federal, state, and local agencies.

To be useful in preparing the draft EA, the requested information must be received by the Commission no later than 30 days past the date of this notice. Address all communications to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All correspondence must clearly show at the top of the first page "Fort Dodge Mill Dam Project, FERC No. 11346".

When filing scoping comments, you should submit an original and 8 copies; this will assure that staff receives your information quickly. Parties to the proceedings (as identified on the official Service List for the Fort Dodge Mill Dam Project) must also send copies of their filings, and all attachments, to the other parties listed on the official service list. The official service list is available from the Commission Secretary at the same address above.

Any questions concerning the scoping process should be directed to Mary Golato (202–219–2804) at the Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North

Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17740 Filed 7–20–94; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

Project No. 10867–001, IN; Notice of Environmental Assessment Scoping

Holliday Historic Restoration Associates, Ltd.;

July 15, 1994.

On January 10, 1994, the Federal Energy Regulatory Commission (Commission) issued a notice indicating that staff is ready to conduct an environmental analysis (REA Notice) for the proposed Holliday Hydroelectric Plant, located on the West Fork of the White River in Noblesville Township, Hamilton County, Indiana. The REA Notice also requested comments from Federal, state, and local resource agencies, licensees and developers, and any other interested groups (the parties). Parties were given until March 10, 1994, to file comments.

The purpose of this notice is to advise all parties as to the proposed scope of the staff's environmental analysis and to seek additional information pertinent to this analysis. The proposed scope of analysis as presented herein is based on the information filed with the Commission by Holliday Historic Restoration Associates, Ltd. (the Applicant), comments received from the parties thus far, and the staff's independent analysis.

Proposed Action

The Applicant proposes to rehabilitate a retired hydroelectric facility owned by Public Service Company of Indiana, Inc. (PSI). The facility is located on the West Fork of the White River, a tributary of the Wabash River, in central Indiana, and used as a source of cooling water for an adjacent coal-fired, steam-electric generating plant owned and operated by PSI. (From 1950 to 1965, the hydroelectric facility, then known as the unlicensed Noblesville Project, was operated by PSI to provide energy for use at PSI's adjacent coal-fired, steam-electric generating plant.) The Applicant intends to use revenues from the rehabilitated project to restore the historic powerhouse and open it to the public for historic tours.

The proposed project would include the following features: (1) an existing concrete dam, 350 feet long and 10 feet high; (2) an existing 11-acre impoundment, with a normal water surface elevation of 764 feet mean sea level; and (3) an existing 25-foot by 50-foot powerhouse that would contain two new turbine-generator units having a total generating capacity of 450 kilowatts.

In addition to the proposed two new turbine-generator units, the Applicant proposes to renovate an existing upstream fish passage facility (concrete flume) and install two new angled trashracks (with 3/4-inch clear bar spacing) above the project intakes, and provide a downstream fish passage facility.

To enhance public recreation, the Applicant proposes to develop a new parking area and picnic facilities on the west bank upstream from the dam, as well as a footbridge across the PSI inlet area, connecting to an existing canoe portage around the dam. Other improvements to the area would include the construction of safety fencing and other safety measures. As indicated earlier, historical tours of the powerhouse would be conducted on weekends for the public.

The Applicant proposes measures relating to project operation to protect and enhance environmental resources in the project area. A 40-cubic feet per second (cfs) minimum flow over the project dam is proposed to protect water quality and fishery resources in the downstream pool area and side channel. The project would be operated in a run-of-river mode, with only minor fluctuations in the headpond elevation to account for natural variations in river flow. In the operational plan for the Holliday Project; the Applicant also proposes to implement a plan to verify run-of-river operation and a seasonal water quality monitoring program for the impoundment.

Project Alternatives

The staff will consider alternatives, including enhancement measures not proposed by the Applicant. The staff will review and consider alternative recommendations for additional resource protection, or enhancement measures that may be appropriate to include in an original minor license. Modifications could include recommendations by the agencies, the general public, and the staff.

In addition to these alternatives, the staff will evaluate the no-action alternative, which maintains the existing environment or status quo at the facility. Under this alternative the project impoundment would continue to provide cooling water for the adjacent coal-fired, steam-electric generating plant, as at present. We use this alternative to set baseline environmental conditions for comparison with other alternatives.

Scope of the Environmental Assessment

The geographic scope of analysis defines the physical limits or boundaries of the proposed action's effects on the resources. Since the proposed action affects each resource differently, the geographic scope for each resource varies. We have identified no affects of operating the Holliday Project that, when coupled with other activities on the West Fork of the White River, would affect environmental resources in a cumulative manner. Therefore, for water quality, fish and wildlife resources, cultural resources, recreation, and all other resources we will focus our analysis on the project area and the West Fork of the White River, unless persuaded by comments during the scoping process.

The temporal scope includes a discussion of the past, present, and future actions and their effects on water quality, fish and wildlife resources, cultural resources, recreation, and other resources. Based on the license term, the temporal scope will look 30 to 50 years into the future, concentrating on the effect on the resource from reasonably foreseeable future actions. The historical discussion will, by necessity, be limited to the amount of available information for each resource.

Environmental Issues

A preliminary list of environmental issues identified by the staff for coverage in an Environmental Assessment (EA) is presented in this section. The list is not intended to be exhaustive or final, but is an initial listing of issues that have been raised and appear to be important. The staff will review all issues raised during the scoping process and make decisions as to the level of analysis needed. If preliminary analysis indicates that any issues presented in this scoping document have little potential for causing significant adverse effects, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

The following issues apply to the Holliday Project:

- effects of the proposed mode of operation on dissolved oxygen and water temperature in the project impoundment and downstream river reach;
- effects of flow-pattern changes from operating the proposed project, and minimum flow needs for the protection of fishery resources and water quality in

the pool area and side channel immediately downstream of the project dam;

- project effects of entrainment and turbine-induced mortality on resident fishes;
- fish passage needs at the project dam;
- effects on the historical value of the project dam and powerhouse, both determined eligible for inclusion in the National Register of Historic Places; and
- effects on public recreational use at the project.

The EA will assess the project-specific effects on the above resources and whether these effects contribute adversely or beneficially to the affected environment.

EA Preparation Schedule

The preliminary schedule for preparing the EA for the Holliday Project is:

Milestones	Target date
Public Scoping	Summer 1994.
Draft EA	September 30, 1994.
Final EA	November 30, 1994.

Request for Comments

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and
- identify reasonable project alternatives.

Federal, state, and local resource agencies, licensees and developers, other interested groups, and the general public are invited to file with the Commission information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the environmental effects of the proposed licensing of the Holliday Project. The types of information sought include:

- information, quantified data, or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues;
- identification of, and information from, any other environmental assessment, environmental impact statement, or similar document or study (previous, on-going, or planned) relevant to the proposed licensing activity on the West Fork of the White River;
- existing information and any data that would assist in describing the past and present actions and effects of the project and other developmental activities on water quality, fish and wildlife resources, cultural resources, and recreation. For example, fish stocking/management histories of the West Fork of the White River, historic water quality data and the reasons for improvement or degradation of the quality, locations of wastewater treatment outfalls or water intakes, or proposals to develop land and water resources within the river;
- identification of any Federal, state, or local resource plans and future project proposals that encompass the West Fork of the White River, with information on when the plans would be implemented, if known. For example, proposals to construct or operate water treatment facilities, recreation areas, water diversions, or implement fishery management programs; and
- documentation that would support a conclusion that the proposed project *does* or *does not* contribute to cumulative adverse or beneficial effects on resources and, therefore, should be excluded from further study or included for further consideration of cumulative effects. Documentation should include, but not be limited to: how the project interacts with other projects on the river and other developmental activities; results from studies; resource management policies; and reports from Federal, state, and local agencies.

To be useful in preparing the draft EA, the requested information must be filed with the Commission no later than 30 days past the date of this notice. Address all communications to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All correspondence must clearly show at the top of the first page "Holliday Project, FERC No. 10867."

When filing scoping comments, you should submit an original and 8 copies; this will assure that the staff receives your information. Parties to the proceedings (as identified on the official Service List for the Holliday Project) must also send copies of their filings, and all attachments, to the other parties listed on the official Service List. The official Service List is available from the Secretary of the Commission at the same address above.

Any questions concerning the scoping process should be directed to Mary Golato (202–219–2804) or Frank Karwoski (202–219–2782) at the Federal Energy Regulatory Commission, Office of Hydropower Licensing, 810 First Street NE., Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17741 Filed 7–20–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–635–000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

July 14, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP94–635–000]

Take notice that on June 30, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–635–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the delivery point known as the Anaconda Copper Company Meter Station located in Cibola County, New Mexico under El Paso's blanket certificate issued in Docket No. CP82–435–000 and CP88–433–000 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.

El Paso proposes to remove one 2" O.D. tap and valve assembly, with appurtenances, and one 4" O.D. positive displacement meter at approximately milepost 343.41 on El Paso's Permian-San Juan Crossover Line in the NW/4 of Section 18, Township 12 North, Range 10 West, Cibola County, New Mexico. The metering facility will be removed with only minimal ground disturbance with that being limited to existing, previously-disturbed right-of-way.

El Paso states that it provides firm transportation service for Gas Company of New Mexico (GCNM) at the Anaconda Copper Company Meter Station pursuant to the terms and conditions of a Transportation Service Agreement dated November 12, 1990.

El Paso understands that Atlantic Richfield Company (ARCO), successor to Anaconda Copper Company has closed an operating site and terminated its June 19, 1974 gas purchase contract with GCNM. This gas purchase contract covered gas service to ARCO's Bluewater Millsite in Cibola County, New Mexico. El Paso understands further that as part of ARCO's termination request, ARCO also requested that the segment of GCNM's

line feeding the Bluewater Millsite be disconnected at El Paso's metering station.

El Paso asserts that as a direct result of the Bluewater Millsite closing, and since GCNM has not requested gas service from this meter station since May 1989, GCNM has requested that El Paso abandon and remove the Anaconda Copper Company Meter Station. This meter station serves no purpose and may obstruct ARCO's clean up of the Bluewater Millsite. Accordingly, El Paso proposes to abandon by removal the Anaconda Copper Company Meter Station.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP94–643–000]

Take notice that on July 5, 1994, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed in Docket No. CP94–643–000 for approval under Sections 157.205, 157.211 and 157.216 to construct and operate delivery facilities on its Shelton Lateral in order to provide enhanced transportation service to Cascade Natural Gas Corporation (Cascade) at the Shelton, Washington delivery point. Applicant proposes the following:

1. construct and operate a new compressor station to consist of one Solar Saturn T–1300 compressor unit, rated at 1,343 horsepower at MP 7.85 on the Shelton Lateral. At a cost of $6,996,700;

2. upgrade the Shelton Meter Station at the terminus of the Shelton Lateral by installing 6-inch turbine meters, a 1,500,000 Btu per hour line heater, 6-inch filter, 4-inch bypass electronic flow measurement, and a 16-foot by 14-foot building. At a cost of $410,700;

3. partially abandon facilities at the Shelton Meter Station, which will be replaced with the new upgraded facilities.

Applicant states that these facilities will increase its capacity to Cascade on the Shelton Lateral by 21,000 MMBtu/d and allow increased delivery pressures to Cascade. The maximum daily design capacity of the upgraded Shelton Meter Station will increase from 12,000 MMBtu/d to 44,270 MMBtu/d.

Firm transportation service through the proposed facilities will be subject to Applicant's Rate Schedules TF–1 and TF–2 in Applicant's FERC Gas Tariff, Third Revised Volume No. 1. The expanded capacity at the Shelton delivery point will also be available under interruptible transportation agreements under Applicant's TI–1 Rate Schedule. Pursuant to a facilities Agreement and the facilities reimbursement provisions of Applicant's tariff, Cascade will reimburse Applicant for all costs connected with the proposed facilities in a monthly Facility Cost-of-Service Charge. Initially this charge will be $165,265.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP94–644–000]

Take notice that on July 5, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–644–000 an abbreviated application, supplemented on July 13, 1994, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to abandon certain facilities in Erie County, Pennsylvania, and to replace the abandoned facilities with a new metering and regulating station, and construct and operate approximately 4,395 feet of twelve-inch pipeline and appurtenant facilities connecting the new station to its existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National states that it proposes to replace an existing metering and regulating station and add a new dehydration facility at National's Summit Storage Field located in Summit Township, Erie County, Pennsylvania. National indicates that to effectuate this construction, it will be necessary to install approximately 4,395 feet of twelve-inch pipeline beginning at an existing valve on National's Line S–52 and ending at National's Line S–57. National further states it will also be required to construct and operate approximately 400 feet of eight-inch inlet and outlet piping to connect the new station to this new pipeline. National estimates the cost of the project at $760,000. National indicates that construction of the facilities will be financed with internally generated funds and/or interim short-term bank loans.

National also seeks authorization to abandon certain facilities at the existing metering and regulating station. The facilities to be abandoned consist of a heater, pipe to by-pass the heater, and a meter run and regulator. National states that the removal of these facilities will not affect service to existing markets.

Comment date: August 4, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP94–653–000]

Take notice that on July 11, 1994, Florida Gas Transmission Company (FTG), 1400 Smith Street, P. O. Box 1188, Houston, Texas 77251–1188 filed in Docket No. CP94–653–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new point of delivery in Iberville Parish, Louisiana under FTG's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) 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.

FTG states that the new delivery point in Iberville Parish, Louisiana, to be called Lake Chicot delivery point, was requested by Iberville Parish Natural Gas (Iberville), a municipality engaged in the local distribution of natural gas to certain communities in Iberville Parish, Louisiana for the ultimate end-use of commercial, industrial and residential gas consumption.

FTG states that the estimated cost to FTG of the proposed construction is $40,000 which Iberville will reimburse. FTG notes that Iberville will construct approximately 850 feet of 2-inch connecting pipe, the meter station, and related appurtenant facilities and FTG will own and operate the facilities constructed by Iberville.

FTG proposes to transport and deliver on an interruptible basis under its Rate Schedule ITS–1, up to 300 MMBtu per day and up to 109,500 MMBtu annually at the new delivery point. FTG states that since the proposed gas deliveries at the new delivery point will be on an interruptible basis, there will be no impact on FTG's peak day delivery but annual deliveries could be affected, up to 109,500 MMBtu.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)

and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17742 Filed 7–20–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–1239–000]

Gulf Power Co.; Filing

July 15, 1994.

Take notice that on July 5, 1994, Gulf Power Company tendered for filing an amendment in the above-referenced docket.

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 July 26, 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. 94–17743 Filed 7–20–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–5017–5]

Notice of Availability of Dredged Material Testing Manual, Request for Comment, and Announcement of Public Information Sessions

SUMMARY: This notice announces the availability of and requests public comment on the draft testing manual entitled "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)". The manual was prepared by an Environmental Protection Agency (EPA)/Corps of Engineers (CE) workgroup comprised of individuals from headquarters, field offices, and research laboratories of both agencies with scientific and/or programmatic expertise related to dredged material discharge activities. Copies of the draft manual can be requested by writing to Ms. Shirley Walker at the address listed below under **ADDRESSES.** Public information sessions will be held at various locations around the country to discuss the draft manual.

DATES AND LOCATIONS: Written comments must be postmarked or submitted by hand on or before October 19, 1994 to Mike Kravitz at the address listed below under **ADDRESSES.**

Public information sessions will be held at the following locations and dates to discuss the draft testing manual "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)":

Boston—August 2, 1994, Ramada Hotel-Airport, 225 McClellan Hwy., Boston, MA 02128 [phone (617) 569–5250, fax (617) 569–5159]; *Washington, DC*—August 3, 1994, Marriot Crystal City, 1999 Jefferson Davis Hwy., Arlington, VA 22202 [phone (703) 413–5500, fax (703) 413–0192]; *Atlanta*—August 4, 1994, Ramada Hotel-North, 1419 Virginia Avenue, Atlanta, GA 30337 [phone (404) 768–7800, fax (404) 767–5451]; *San Jose*—August 30–31, 1994, San Jose Hilton, 300 Almaden Blvd., San Jose, CA 95110 [phone (408) 287–2100, fax (408) 987–4489]; *Seattle*—September 1–2, 1994, Red Lion Hotel-Airport, 18740 Pacific Hwy., Seattle, WA 98188 [phone (206) 242–8600, fax (206) 242–9727]; *Chicago*—September 13–14, 1994, Holiday Inn O'Hare, 5440 N. River Rd., Rosemont, IL 60018 [phone (708) 671–6350, fax (708) 671–1378]; *St. Louis*—September 14, 1994, St. Louis Airport Hilton, 10330 Natural Bridge Rd., St. Louis, MO 63134 [phone (314) 426–5500, fax (314) 426–3429]; *Houston*—September 15, 1994, Holiday Inn Intercontinental Airport, 15222 John F. Kennedy Blvd., Houston, TX 77032 [phone (713) 449–2311, fax (713) 442–6833].

ADDRESSES: A copy of "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)" can be obtained by calling or writing to Ms. Shirley Walker, U.S. Corps of Engineers, Waterways Experiment Station, IM–MI–R, 3909 Halls Ferry Road, Vicksburg, Mississippi, 39180–6199; telephone: 601–634–2571.

Comments may be mailed or delivered to: Mike Kravitz, Mail Code 4305, Attention: Testing Manual Comments, Office of Science and Technology, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone: 202–260–8085. Commenters are requested to submit an original and 3 copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Mike Kravitz, Mail Code 4305, Office of Science and Technology, U.S. Environmental Protection Agency, 401

M Street SW., Washington, DC 20460 (telephone: 202–260–8085); or Kirk Stark, Regulatory Branch, CECW–OR, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Ave. NW., Washington, DC 20314 (telephone: 202–272–1786).

SUPPLEMENTARY INFORMATION: Proposed discharges of dredged or fill material in fresh, estuarine, and saline (near-coastal) waters, or "waters of the United States," must be evaluated to determine the potential environmental impacts of such activities. Specifically, Section 404 of the Federal Water Pollution Control Act of 1972, Public Law 92–500, as amended by the Clean Water Act (CWA), Public Law 95–217, requires that the discharge of dredged or fill material into waters of the U.S. be permitted by the Corps of Engineers (CE). EPA has the primary role in developing the environmental guidelines—the section 404(b)(1) Guidelines (Guidelines)—in conjunction with CE, by which permit applications must be evaluated. The Guidelines are published at 40 CFR part 230. Fundamental to the Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

Dredged material testing is part of the larger evaluation of a proposed discharge activity to determine its compliance with the Guidelines. Sections 230.60 and 230.61 of the Guidelines provide the basis for certain contaminant-related factual determinations regarding the potential environmental effects of a proposed discharge. The present draft testing manual, "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)," details the physical, chemical, and biological evaluation procedures outlined in §§ 230.60 and 230.61. The manual includes technical guidance on sampling and analysis, physical and chemical evaluations, bioassays (toxicity and bioaccumulation), quality assurance/quality control, evaluation of discharges from confined disposal facilities, evaluation of mixing, statistical methods, and identification of ammonia toxicity. It uses a tiered testing approach which is scientifically valid and cost-effective. Conclusions reached utilizing this manual will be used to make factual determinations of the potential environmental effects of a proposed discharge of dredged material.

This manual will replace the May 1976 testing protocol, "Ecological Evaluation of Proposed Discharge of Dredged or Fill Material into Navigable Waters," which will no longer be applicable. Since development of the 1976 guidance, EPA and CE have gained a great deal of experience in testing dredged material for environmental effects. Much of this experience has been used in the development of a 1991 "ocean" testing manual to implement requirements in the Marine Protection Research and Sanctuaries Act for evaluation of potential environmental impacts associated with the discharge of dredged material in waters seaward of the baseline of the territorial sea. Further technical improvements, such as the refinement of bioassay tests, have been incorporated in the present draft testing manual, "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)," which implements dredged material testing requirements under the CWA.

The final testing manual will be published in approximately 6 months after review and consideration of the comments received on this draft.

Dated: July 18, 1994.

Mark Luttner,

Acting Assistant Administrator for Water.

[FR Doc. 94–17772 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

The "8900" Lines Agreement, et al.; Notice of 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, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 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.: 202–008900–052.

Title: The "8900" Lines Agreement.

Parties:

A.P. Moller-Maersk Line
DSR Senator Joint Service
National Shipping Company of Saudi Arabia
United Arab Shipping Company
Waterman Steamship Corp.
American President Lines, Ltd.
Croatia Line
P&O Containers Limited
Sea-Land Service, Inc.

Synopsis: The proposed amendment permits the Agreement members to "open" tariff rules or regulations. In addition, Agreement members may discuss such "open" rates, rules or regulations, however, adherence to "open" agreement items is voluntary.

Agreement No.: 202–011259–009.

Title: United States/Southern & Eastern Africa Conference.

Parties:

Bank Line East Africa Limited
Empresa de Navegacao International
Lykes Bros. Steamship Co., Inc.
Mediterranean Shipping Company S.A.
Safbank Line Ltd.
Wilhelmsen Lines AS

Synopsis: The proposed amendment revises Article 7 to permit member lines serving Eastern Africa by transshipment via North Europe the option of participating only in the Southern Africa range of the Agreement. The parties have requested a shortened review period.

Agreement No.: 202–011456–001.

Title: South Europe American Conference.

Parties:

Evergreen Marine Corporation (Taiwan) Ltd.
"Italia" di Navigazione, S.p.A.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment adds a new Article 17.7 which provides that the financial guarantee provided by a Member under this Agreement may be used by that Member to satisfy its financial guarantee obligation under both this Agreement and the U.S./Mediterranean Policing Agreement (FMC Agreement No. 203–011447).

Agreement No.: 207–011461.

Title: Project PACOM Joint Service Agreement.

Parties:

American President Lines, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed Agreement would authorize the parties to establish a joint service in the trade between U.S. Pacific Coast ports and inland points via

such ports on the one hand, and ports in Japan, South Korea and other Pacific Basin nations or Guam and inland points via such ports on the other hand. The parties have requested a shortened review period.

Agreement No.: 203–011462.

Title: TAAFLO/ACC Discussion Agreement.

Parties:

Trans-Atlantic American Flag Liner Operators

American Auto Carriers, Inc.

Synopsis: The proposed Agreement authorizes the parties to meet, discuss rates, through rates, volume, time-volume, charges for services and other matters of mutual concern in the trade between U.S. ports and points and ports and points in Europe. Adherence to any agreement reached is voluntary.

Dated: July 18, 1994.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94–17778 Filed 7–20–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

United Bancorp of Kentucky, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have 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)).

Each 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 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 15, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. United Bancorp of Kentucky, Inc., Lexington, Kentucky; to acquire 78 percent of the voting shares of American Fidelity Bank & Trust Co., Corbin, Kentucky.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Central Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of Lee County National Bank, Giddings, Texas.

2. Freeman Bancstock Investments, Irving, Texas; to acquire 76.27 percent of the voting shares of Heritage Bankshares, Inc., Dallas, Texas, and thereby indirectly acquire Turtle Creek National Bank, Dallas, Texas. In connection with this application, Freeman Bancstocks subsidiary Inwood Bancshares, Inc., Dallas, Texas; will merge with Heritage Bankshares, Inc., Dallas, Texas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Community Bancshares, Inc., Joseph Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Wallowa County, Joseph, Oregon.

Board of Governors of the Federal Reserve System, July 15, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–17732 Filed 7–20–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 494]

State Grants to Support Development of Nutrition Intervention Programs

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for grants to support the development of State and community nutrition intervention programs. This announcement addresses two distinct components:

I. "Nutrition Intervention Assistance" for supporting the implementation of nutrition interventions.

II. "5 A Day Evaluation" for supporting the evaluation of 5 A Day for Better Health nutrition intervention programs.

Applicants may apply for either the Nutrition Intervention Assistance component or the 5 A Day Evaluation component or both components.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related specifically to the priority area of nutrition and, generally, to several other priority areas of health promotion and preventive services—including physical activity and fitness, heart disease, cancer, and diabetes. (For ordering a copy of "Healthy People 2000," see the section, "Where to Obtain Additional Information.")

Authority

This program is authorized under sections 301(a), [42 U.S.C. 241 (a)] and 317(k)(2), [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

A. Nutrition Intervention Assistance

Assistance will be provided only to the health departments of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Eligible applicants for nutrition intervention program grants have been restricted to official health departments of States or their bona fide agents or instrumentalities because:

1. The methodology to conduct this program has been structured to support the national goals and objectives of "Healthy People 2000." In many instances, State health departments have already embraced or established

their own goals and objectives which match or are synonymous with those outlined in "Healthy People 2000."

2. The conduct of Statewide health promotion, health education, and risk reduction programs directed towards reducing the prevalence of behavioral risks in the population lie solely with State Health Departments.

3. Program evaluation is expected to be useful to State Health Departments in program and intervention development. Because comparable methods are used from State to State and from year to year, States can compare data and intervention methods with other States and monitor the effects of interventions over time.

B. 5 A Day Evaluation

Eligible applicants are restricted to official health departments of States or their bona fide agents or instrumentalities for the reasons listed in (A) above. Eligibility for this component is further restricted to States who have established, clearly defined, evaluable, long range 5 A Day for Better Health projects in a specific community channel.

Availability of Funds

Approximately $740,000 is available in FY 1994 to fund approximately 29 awards. Awards may be made for the Nutrition Intervention Assistance, or 5 A Day Evaluation or both.

A. Nutrition Intervention Assistance

Approximately $450,000 is available to fund approximately 25 awards. It is expected that the average award will be $18,000, ranging from $10,000 to $30,000. States are encouraged to use these funds to expand the community involvement toward the goals of this program.

B. 5 A Day Evaluation

Approximately $290,000 is available to fund approximately 4 awards. It is expected that the average award will be $75,000, ranging from $60,000 to $90,000. Awards will be considered only for applicants who have an established, clearly defined, and evaluable long range 5 A Day for Better Health project in a specific community channel (e.g., supermarkets, schools, churches, food assistance programs, worksites, health clinics, media, etc.).

It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of one year. Funding estimates may vary and are subject to change.

Awards under this announcement will not be sufficient to fully support an applicant's proposed activities, but are meant to be used in conjunction with other resources—whether direct funding or in-kind contributions—that the applicant may have available.

Purpose

The awards will support State efforts to develop and evaluate nutrition intervention programs. Emphasis will be placed on supporting activities of partnerships to carry out interventions and/or evaluations designed to increase the consumption of fruits and vegetables, to decrease fat intake, and/or to increase physical activity while improving diet.

Program Requirements

A. Nutrition Intervention Assistance

Promote programmatic activities to achieve Healthy People 2000 dietary objectives that relate to increased consumption of fruits and vegetables, reduced intake of fat, and/or improving diet while increasing physical activity. Applicants should propose specific and discrete activities, but applicants are given latitude in deciding which specific activities to propose. Activities proposed by applicants might include but are not limited to the following:

1. Assist a Statewide or community-wide coalition to implement a 5 A Day for Better Health project by using effective public and private partnerships.

2. Implement an intervention to promote physical activity and improved diet among a defined low-income population.

3. Evaluate a health communication campaign. (Such campaigns could be broad-based, could target specific populations, or could support specific programs, such as Project LEAN or 5 A Day for Better Health.)

4. Integrate a nutrition education component into an existing State chronic disease program (e.g., diabetes, cancer, and heart disease prevention programs) or into appropriate services of a managed care provider.

B. 5 A Day Evaluation

An evaluation of a 5 A Day intervention in a specific community channel. Applicants should propose a plan for an evaluation of a clearly defined, long range effort in a specific community channel.

Evaluation Criteria

Applications for the Nutrition Intervention Assistance and the 5 A Day Evaluation components will be allocated 100 points each and will be reviewed and evaluated according to the following criteria:

A. Nutrition Intervention Assistance

1. Background

The degree to which the applicant succinctly describes the problems to be addressed and current activities for resolving them. (10 points)

2. Objectives

The degree to which objectives are realistic, time-phased, measurable, and specific. (20 points)

3. Program Plan

The adequacy of the applicant's plan to carry out the proposed activities and accomplish the stated objectives. (40 points)

4. Program Integration

The adequacy of the applicant's commitment to provide adequate staff and resources necessary to achieve the program objectives. (20 points)

5. Evaluation

The extent to which the applicant presents a reasonable plan to measure progress in meeting objectives and evaluate performance. (10 points)

6. Budget

The extent to which the applicants provides a detailed budget and line item justification that is consistent with the stated objectives, program purpose, and planned activities of the project. (not weighted)

B. 5 A Day Evaluation

1. Background

The degree to which the applicant clearly describes a long range, clearly defined, evaluable 5 A Day for better Health project, including a description of the intervention method and channel. (25 points)

2. Program Plan

The adequacy of the applicant's plan to carry out the evaluation, including the specific objectives and measures in the evaluation. (45 points)

3. Capacity

The capabilities of the personnel (including consultants where appropriate) to carry out the evaluation. (30 points)

4. Budget

The extent to which the applicant provides a detailed budget and line item justification that is consistent with the evaluation plan. (not weighted)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal

Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, GA 30305, no later than September 21, 1994. (A waiver for the 60-day requirement has been requested.) The Program Announcement Number and Program Title should be referenced on the document. CDC does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305. This should be done no later than September 21, 1994. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the grant will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The program announcement and application kits were sent to all eligible applicants in July 1994.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail Stop E–18, Atlanta, GA 30305, telephone (404) 842–6508. Programmatic technical assistance may be obtained from Judy Pruden, M.Ed., R.D., Division of Nutrition, National Center for Chronic Disease Prevention and Health Promotion, Mail Stop K–26, CDC, 4770 Buford Highway, NE., Atlanta, GA, 30341–3724, telephone (404) 488–4260.

Please refer to Announcement Number 494 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 14, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–17768 Filed 7–20–94; 8:45 am]

BILLING CODE 4163–18–P

New Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, Department of Health and Human Services.

ACTION: Notice; corrections.

SUMMARY: The Public Health Service is making corrections to the notice on New Vaccine Information Materials published Monday, June 20, 1994 (59 FR 31888).

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention (CDC), Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: On June 20, 1994, the Public Health Service published a notice on New Vaccine Information Materials (59 FR 31888), which includes revised information materials for diphtheria, tetanus, pertussis, measles, mumps, rubella, and polio. This notice makes several corrections in the materials.

Dated: July 15, 1994.

Claire V. Broome, M.D.,

Deputy Director, Centers for Disease Control and Prevention (CDC).

The following corrections are made to New Vaccine Information Materials, Notice (59 FR 31888):

1. On page 31888, third column, line 67, change "Tetanus and Diphtheria Vaccine (Td): What you need to know before you get the vaccine." to "Tetanus and Diphtheria Vaccine (Td): What you need to know before you or your child gets the vaccine."

2. On page 31889, second column, line 23, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

3. On page 31889, second column, line 26, change "Because most children get the polio vaccine, there are now very few cases of this disease." to "Because most children get the polio vaccines, there are now very few cases of this disease."

4. On page 31890, first column, line 1, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

5. On page 31890, first column, line 63, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

6. On page 31890, first column, line 67, change "Because most children get the MMR vaccine, there are now many fewer cases of these diseases." to "Because most children get the MMR vaccines, there are now many fewer cases of these diseases."

7. On page 31890, second column, line 57, change "The risk from the vaccine are much smaller than the risks from the diseases if people stopped

using vaccine." to "The risks from the vaccine are much smaller than the risks from the diseases if people stopped using vaccine."

8. On page 31890, third column, line 12, change, "Rarely, pain or stiffness lasts a month or longer, or may come and go." to "Rarely, pain or stiffness lasts a month or longer, or may come and go; this is most common in young and adult women."

9. On page 31890, third column, line 41, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

10. On page 31891, first column, line 24, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

11. On page 31891, first column, line 28, change "Because most children get the vaccine, there are now many fewer cases of these diseases." to "Because most children get the vaccines, there are now many fewer cases of these diseases."

12. On page 31891, second column, line 57, change "Shock-collapse (becomes blue or pale, limp, and faints)" to "'Shock-collapse' (becomes pale, limp, and less alert)".

13. On page 31891, second column, line 66, change

"—Decreased consciousness or coma

There is disagreement about whether or not DTP causes lasting brain damage. If it does, it is very rare." to

"—Decreased consciousness or coma

Some of these children may have lasting brain damage. There is disagreement about whether or not DTP causes the lasting brain damage. If it does, it is very rare."

14. On page 31891, third column, line 7, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

15. On page 31891, third column, line 24, change "What you need to know about the vaccine" to "What you need to know before you or your child gets the vaccine".

16. On page 31891, third column, line 45, change "About the Vaccine" to "About the Vaccines".

17. On page 31891, third column, line 47, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

18. On page 31892, first column, line 1, change "Tell your doctor or nurse if you:" to "Tell your doctor or nurse if the person getting the vaccine:".

19. On page 31892, first column, line 7, change "now have a moderate or severe illness" to "now has a moderate or severe illness".

20. On page 31892, first column, line 9, change "are pregnant" to "is pregnant".

21. On page 31892, third column, line 7, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

[FR Doc. 94–17770 Filed 7–20–94; 8:45 am]
BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94E–0141]

Determination of Regulatory Review Period for Purposes of Patent Extension; Aceon™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Aceon™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Aceon™. Aceon™ (perindopril erbumine) is indicated for the treatment of patients with essential hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Aceon™ (U.S. Patent No. 4,508,729) from Adir, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated May 10, 1994, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval for Aceon™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Aceon™ is 2,284 days. Of this time, 1,367 days occurred during the testing phase of the regulatory review period, while 917 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: October 1, 1987. The applicant claims October 23, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 1, 1987, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: June 28, 1991. FDA has verified the applicant's claim that June 28, 1991, was the date the new drug application (NDA) for Aceon™ (NDA 20- 184) was initially submitted.

3. *The date the application was approved*: December 30, 1993. FDA has verified the applicant's claim that NDA 20–184 was approved on December 30, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,588 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 19, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 17, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 14, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–17737 Filed 7–20–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0435]

Determination of Regulatory Review Period for Purposes of Patent Extension; Demadex™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Demadex™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Demadex™. Demadex™ (torsemide) is indicated for the treatment of edema associated with congestive heart failure, renal disease, or hepatic disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Demadex™ (U.S. Patent No. Re. 30,633) from A. Christians Societe Anonyme, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated December 9, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Demadex™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Demadex™ is 2,790 days. Of this time, 1,882 days occurred during the testing phase of the regulatory review period, while 908 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: January 4, 1986. FDA has verified the applicant's claim that January 4, 1986, was the date the investigational new drug application (IND) became effective. The applicant claims January 10, 1986, as the date the IND became effective. However, FDA records indicate that the IND effective date was January 4, 1986, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: February 28, 1991. FDA has verified the applicant's claim that February 28, 1991, was the date the new drug application (NDA) for Demadex™ (NDA 20–136) was initially submitted.

3. *The date the application was approved*: August 23, 1993. FDA has verified the applicant's claim that NDA 20–136 was approved on August 23, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 19, 1994, submit

to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 17, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 14, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–17738 Filed 7–20–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 5, 1994, 9 a.m., Holiday Inn Crowne Plaza, Regency Room, 1750 Rockville Pike, Rockville, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn Crowne Plaza. Attendees requiring overnight accommodations must contact the hotel at 301–468–1100 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate on availability.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Larry J. Brindza, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 29, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) A points-to-consider document for automated cervical cancer slide readers and automated cervical cancer slide preparation instruments, (2) home use prothrombin time tests, (3) standardization of coagulation assays and reagents, (4) hematology replacement reagents, and (5) a briefing on the FDA Immunohistochemistry Products Workshop held on June 28 and 29, 1994.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding cervical cancer slide preparation devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 19, 1994, 9 a.m., Parklawn Bldg., Conference rm. E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, 9 a.m. to 12 m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss draft guidance documents on the following topics: (1) Anti-nuclear antibodies, (2) anti-thyroid antibodies, and (3) alpha-fetoprotein for neural tube defects. In addition, the committee will discuss points-to-consider documents on immunohistochemical antibody products and tumor markers (carcinoembryonic antigen, alpha-fetoprotein, and prostate specific antigen) for monitoring.

Single copies of the draft guidance documents are available from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–2041, FAX 301–443–8818. The points-to-consider documents will be available the day of the meeting.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding pending or future device applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. August 23, 1994, 12:30 p.m., and August 24, 1994, 8 a.m., Holiday Inn-Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Closed committee deliberations, August 23, 1994, 12:30 p.m to 6 p.m.; open committee discussion, August 24, 1994, 8 a.m. to 8:30 a.m.; open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Nancy Cherry or Stephanie

Milwit, Scientific Advisors and Consultants Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 17, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will hear reports from committee members on liaison activities for the committee and consider vaccine safety issues including: (1) Methodological approaches to assessing vaccine safety, (2) general scientific considerations, (3) the Vaccine Adverse Events Reporting System, and (4) recent reports from the Institute of Medicine.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications or product licensing applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C 552b(c)(4)).

Radiological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 29, 1994, 1 p.m., Parklawn Bldg., Conference rm. G, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, 1 p.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5 p.m.; Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1212.

If anyone who is planning to attend the meeting will need any special assistance as defined under the Americans with Disabilities Act, please notify the contact person listed under the *"Date, time, and place"* portion above.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 15, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss recommended classification of picture archiving and communication devices.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding pending and future device applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a

clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 15, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–17694 Filed 7–20–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Nonprescription Drugs Advisory Committee, which is scheduled for July 27, 1994. This meeting was announced in the **Federal Register** of June 24, 1994 (59 FR 32699). The amendment is being made to reflect a change in the date of the meeting from a 1-day to a 2-day meeting and to announce a closed portion of the meeting, which is scheduled for the second day and which will be held at a location different from that of the open session. The open committee discussion remains the same as originally announced. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger or Mae Brooks, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 1994, FDA announced that a meeting of the Nonprescription Drugs Advisory Committee would be held on June 27, 1994. On page 32699, in the third column, under *"Date, time, and place"* and *"Type of meeting and contact person,"* portions of this meeting are amended, and on page 32700, in the first column, because the committee will now have a closed portion on July 28, 1994, a *"Closed committee deliberations"* paragraph is added to read as follows:

Date, time, and place. July 27, 1994, 2 p.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD, and July 28, 1994, 8:30 a.m., Montrose Room, Ramada Inn, 1775 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 27, 1994, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 6 p.m.; closed committee deliberations, July 28, 1994, 8:30 a.m. to 12 m.; Lee L. Zwanziger or Mae Brooks, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

Closed committee deliberations. On July 28, 1994, the committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dated: July 14, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–17695 Filed 7–20–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for existing systems of records.

SUMMARY: HCFA is proposing to revise the system notices for the "Carrier Medicare Claims Records" (CMCR), System No. 09–70–0501, and the "Intermediary Medicare Claims Records" (IMCR), System No. 09–70–0503. The Privacy Act permits disclosure of information without the prior written consent of an individual for "routine use" that is; disclosure for purposes compatible with the purpose for which the data is collected. HCFA is proposing to revise the CMCR and IMCR by adding a new routine use for release of intermediary and carrier maintained beneficiary data to servicing Medicare banks and/or provider banks.

The purpose of this new routine use is to allow fiscal intermediaries (FIs) and carriers to send claims payment and beneficiary information to providers or their banks either directly, or through a Value Added Network (VAN) telecommunications service and for provider banks to use this information to perform account management activities on behalf of providers. Under this scenario, the electronic funds transfer (EFT) and the electronic remittance advice (ERA) flow together through the banking system. The consolidation of Medicare beneficiary and payment information will reduce paperwork and administrative costs.

EFFECTIVE DATES: HCFA filed an altered system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on July 18, 1994. To ensure all parties have adequate time in which to comment, the altered systems of records, including routine uses, will become effective 40 days from the publication of this notice or from the date submitted to OMB and the Congress, whichever is later, unless HCFA receives comments which require

alterations to this notice. The proposed new routine use shall take effect without further notice 40 days from the date of publication unless comments received on or before that date would warrant changes.

ADDRESSES: Please address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budgetary Services, Office of Customer Relations and Communications, HCFA, Room 2–H–4 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Joseph Morical, Division of Financial Management, Office of Contracting and Financial Management, Bureau of Program Operations, Health Care Financing Administration, Room 1–B–4, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. His telephone number is (410) 966–7477.

SUPPLEMENTARY INFORMATION: The IMCR and the CMCR exist to assure proper health insurance benefit payments to or on behalf of entitled Medicare Part A and Part B beneficiaries. The Privacy Act permits disclosure of information without the prior written consent of an individual for "routine use" that is; disclosure for purposes compatible with the purpose for which the data is collected.

The IMCR and CMCR systems of records were last published in the **Federal Register** at 55 FR 37549; September 12, 1990. Currently, there are 23 routine uses in the IMCR system and 25 in the CMCR system that permit disclosure of information to individuals and/or organizations for a variety of reasons, the majority of which relate to the timely and accurate processing of Medicare claims, payment safeguards activities, and research. There are safeguards in place, as described in the safeguard section of both systems, to protect the data which have been developed in accordance with part 6 of the HHS Information Resource Management Manual and the National Institute of Standards and Technology Information Process Standards.

We are proposing to add a new routine use (number (24)/(26)) to the Carrier and Intermediary systems of records, for the release of data without an individuals' prior written consent. The new routine use would permit the release of beneficiary data via ERA to servicing Medicare banks and to provider banks. Servicing Medicare banks enter into agreements with the Health Care Financing Administration and with contracted Medicare claims processors to provide check clearing, account maintenance and electronic payment origination services for the Medicare program. The proposed routine use allows release of data from the IMCR and the CMCR to servicing Medicare banks and/or Medicare provider banks for one or more of the following purposes: (1) For servicing Medicare banks to transmit ERAs on behalf of Medicare contractors to Medicare providers directly or through the banking system to either the provider's bank or a VAN; (2) For provider banks to receive ERAs from the servicing Medicare banks and to transmit the remittance information directly to Medicare providers via mail, telefax, or electronic transmission; (3) For provider banks to receive ERAs from the originating Medicare banks in order to perform account maintenance activities at the request of Medicare providers.

Transmitting remittance data electronically to providers or their banks directly from the servicing Medicare bank, and/or electronically transmitting beneficiary and provider data along with payment information from the servicing Medicare bank to providers, their banks or a VAN service, allows for more efficient payment and reconciliation processes for both HCFA and providers. The new routine use number (24), for the IMCR, and (26), for the CMCR, will read as follows:

(24)/(26) Servicing Fiscal Intermediary/Carrier banks, Automated Clearing Houses, VANs and provider banks to the extent necessary to transfer to providers electronic remittance advices of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information.

Technical amendments have been made to routine use number (24)/(26) for consistency with the current notices. The IMCR and CMCR systems maintain information for the purpose of processing and paying Medicare benefits to or on behalf of eligible individuals. The proposed new routine use is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since it is compatible with this purpose. In accordance with OMB Guidelines (Circular A–130, 58 FR 36068, 36077 July 2, 1993), this addition of a routine use constitutes a significant change in the system of records. Accordingly, we have prepared a report of an altered system of records under 5 U.S.C. 552a(r). In addition, for the convenience of the reader, we are publishing the notice for both systems in their entirety below.

Dated: July 12, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

09–70–0501

SYSTEM NAME:

Carrier Medicare Claim Records. HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Carriers under contract to the Health Care Financing Administration (HCFA) and the Social Security Administration. Direct any inquiries regarding carrier locations to HCFA, Bureau of Program Operations, Office of Contracting and Financial Management, Division of Acquisition and Contracts, Contractor Operations Branch, Meadows East Building, Room 332, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries who have submitted claims for Supplementary Medical Insurance (Medicare Part B), or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request for Payment: Provider Billing for Patient services by Physician; Prepayment Plan for Group Medicare Practice dealing through a Carrier, Health Insurance Claim Form, Request for Medical Payment, Patient's Request for Medicare Payment, Request for Medicare Payment-Ambulance, Explanation of Benefits, Summary Payment Voucher, Request for Claim Number Verification; Payment Record Transmittal; Statement of Person Regarding Medicare Payment for Medical Services Furnished Deceased Patient; Report of Prior Period of Entitlement; itemized bills and other similar documents from beneficiaries required to support payments to beneficiaries and to physicians and other suppliers of Part B Medicare services; Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1842, 1862(b) and 1874 of title XVIII of the Social Security Act (42 U.S.C. 1395u, 1395y(b) and 1395kk).

PURPOSE(S):

To properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

(1) Claimants, their authorized representative or representative's payees to the extent necessary to pursue claims made under Title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following; the individual's eligibility to benefits under the Medicare program;: The amount of reimbursement;: Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Peer Review Organizations and Quality Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices of nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained.

b. Determines that the purpose for which this disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety or any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicare eligibility considerations. Disclosures of physicians' customary charge data are made to State audit agencies in order to ascertain the corrections of Title XIX charges and payments.

(15) The Department of Justice to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component therein; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice or HHS, (where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Peer review groups, consisting of members of State, County, or local medical societies or medical care

foundations (physicians), appointed by the medical societies or foundation at the request of the carrier to assist in the resolution of questions of medical necessity, utilization of particular procedures or practices, or other utilization of services with respect to Medicare claims submitted to the carrier.

(17) Physicians and other suppliers of services who are attempting to validate individual items on which the amounts included in the annual Physician-Supplier Payment List or similar publications are based.

(18) Senior citizen volunteers working in intermediaries' and carriers' offices to assist Medicare beneficiaries in response to beneficiaries' requests for assistance.

(19) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(20) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(21) Insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information the entity must agree to the following conditions:

a. To certify that the individual on whom the information is being provided is one of its insured;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(22) To a contractor for the purpose of collating, analyzing, aggregating or other wise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(23) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the data were provided, collected or obtained:

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objectives for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization in HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(a) Not to use the data for purposes that are not related to the evaluation of cost, quality and effectiveness of care;

(b) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(c) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(24) to insurers, underwriters, third party administrators, self-insurers, groups health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or the Department of Motor Vehicles), for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name.
- Beneficiary Address.
- Beneficiary Health Insurance Claim Number.
- Beneficiary Social Security Number.
- Beneficiary Sex.
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider name and number
- Physician name and number
- Supplier name and number
- Dates of service
- Nature of Service
- Diagnosis.

To administer the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b)(2), (3), and (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators (TPAs), self-insured, etc.:

- Subscriber Name and Address.
- Subscriber Date of Birth.
- Subscriber Social Security Number.
- Dependent Name.
- Dependent Date of Birth.
- Dependent Social Security Number.

• Dependent Relationship to Subscriber.
• Insurer/Underwriter/TPA Name and Address.
• Insurer/Underwriter/TPA Group Number.
• Insurer/Underwriter/TPA Group Name.
• Prescription Drug Coverage.
• Policy Number.
• Effective Date of Coverage.
• Employer Name, Employer Identification Number (EIN) and Address.
• Employment Status.
• Amounts of Payment.

To Administer the Medicare Secondary Payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

• Beneficiary's Name and Address.
• Beneficiary's Date of Birth.
• Beneficiary's Social Security Number.
• Name of Insured.
• Insurer Name and Address.
• Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement.
• Insured's Policy Number.
• Effective Date of Coverage.
• Date of accident, injury or illness.
• Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers' compensation settlement.
• Employer Name and Address (Workers' Compensation only).
• Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payers in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

—To administer the MSP provisions more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, third party administrators (TPAs), and self-insured plans, concerning potentially affected individuals:

• Subscriber Health Insurance Claim Number.
• Dependent Name.
• Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance.
• Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer.
• Dates of employment including termination date, if appropriate.
• Number of full and/or part-time employees in the current and preceding calendar years.
• Employment status of subscriber, for example full or part time, self employed.

(25) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

(26) To servicing Fiscal Intermediary/Carrier banks, Automated Clearing Houses, VANs and provider banks to the extent necessary to transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information. See "Supplementary Information."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper and electronic media.

RETRIEVABILITY:

System is indexed by health insurance claim number. The record is prepared by the physician, supplier or other provider with identifying information received from the beneficiary to establish eligibility for Medicare and document and support payments to physicians, suppliers or other providers by the carrier. The claim data are forwarded to the Health Care Financing Administration, Bureau of Data Management and Strategy, Baltimore, MD, where they are used to update the Central Office Records.

SAFEGUARDS:

Unauthorized personnel are denied access to the records area. Disclosure is limited. Physical safeguards related to the transmission and reception of data between Rockville and Baltimore are those requirements established in accordance with HHS standards and National Institute of Standards and Technology guidelines (e.g., security codes will be used, limiting access to authorized personnel). System securities are established in accordance with HHS Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program, and HCFA's Automated Information Systems (AIS) Guide, Systems Security Policies.

RETENTION AND DISPOSAL:

Records are closed at the end of the calendar year in which paid, held 2 additional years, transferred to Federal Records Center and destroyed after another 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Director, Bureau of Program Operations, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most convenient social security office, the appropriate carrier, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance claim number and the name as shown on social security records. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought. These procedures are in accordance with Department Regulations, 45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification.

These procedures are in accordance with Department regulations, 45 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The data contained in these records is either furnished by the individual or, in the case of some Medicare secondary payer situations, through third party contacts. In most cases, the identifying information is provided to the physician by the individual. The physician then adds the medical information and submits the bill to the carrier for payment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–70–0503

SYSTEM NAME:

Intermediary Medicare Claims Records, HHS/HCFA/BPO

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Intermediaries under contract to the Health Care Financing Administration and the Social Security Administration. Direct inquiries for intermediary locations to: HCFA, Bureau of Program Operations, Office of Contracting and Financial Management, Division of Acquisition and Contracts, Contractor Operations Branch, Meadows East Building, Room 332, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare parts A and B, or are eligible for Medicare, or individuals whose enrollment in an employer group health benefits plan covers the beneficiary under Medicare.

CATEGORIES OF RECORDS IN THE SYSTEM:

Billing for Medical and Other Health Services: Uniform bill for provider services or equivalent data in electronic format, and Medicare Secondary Payer records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number, address, date of birth, medical record number, prior stay information, provider name and address, physician's name and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission and discharge, other health insurance, diagnosis, surgical procedures, a statement of services rendered for related charges and other data needed to substantiate claims.

The following elements are outpatient data provided to Medicare intermediaries by rehabilitation agencies, skilled nursing facilities, hospital outpatient departments, home intravenous drug providers and home health agencies that provide physical therapy in addition to home health services:

- Outpatient's name.
- HI number.
- Admission data to provider.
- Place treatment rendered.
- Number of visits since start of care.
- Diagnosis.
- Diagnosis requiring treatment.
- Onset of condition for which treatment is being sought.
- Dates of previous therapy for same diagnosis.
- Other therapy outpatient is currently receiving.
- Observations.
- Precautions and medical equipment.
- Functional status immediately prior to this therapy.
- Types of treatment—modalities.
- Frequency of treatment.
- Expected duration of treatment.
- Rehabilitation potential.
- Level of communication potential.
- Average time per visits.
- Goals.
- Statement of problem at beginning of billing period.
- Changes in problem at end of billing period.
- Signature of therapist.
- Certification and recertification by physician that services are to be provided from an established plan of care.
- Tests results.
- Biopsy reports.
- Methods of administration, e.g., pill vs. injection.
- Physician orders.
- Procedure codes.
- Changes.
- Weekly progress notes.
- National Drug Code (NDC).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1816, 1862(b) and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395h, 1395y(b) and 1395kk).

PURPOSE(S):

To process and pay Medicare benefits to or on behalf of eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

(1) Claimants, their authorized representatives or representative payees to the extent necessary to pursue claims made under title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts, without the consent of the individual to whom the information pertains, in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy provide to the individual), or

(b) The data are needed to establish to validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's eligibility to benefits under the Medicare program; the amount of reimbursement of any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of systems activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiations of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecution violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Peer Review Organizations and Quality Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices or nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit;

(d) When required by law.

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by the provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determination of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicaid eligibility considerations.

(15) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee, or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the government party, provided, however, that in such case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Senior citizen volunteers working in the intermediaries' and carriers' offices to assist Medicare beneficiaries in response to beneficiaries requests for assistance.

(17) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(18) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(19) Insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insured:

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(20) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(21) To any agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring; and

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Removed or destroy the information that allows the individual

to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audits; or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(22) To insurers, underwriters, third party administrators (TPAs), self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds. Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurers pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, Or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 U.S.C. implementation of the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name.
- Beneficiary Address.
- Beneficiary Health Insurance Claim Number.
- Beneficiary Social Security Number.
- Beneficiary Sex.
- Beneficiary Date of Birth.
- Amount of Medicare Conditional Payment.
- Provider Name and Number.
- Physician Name and Number.
- Supplier Name and Number.
- Dates of Service.
- Nature of Service.
- Diagnosis.

The administer the Medicare Secondary Payer provision at 42 USC 1395y(b) (2), (3), and (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrator, self-insurers, etc.:

- Subscriber Name and Address.
- Subscriber Date of Birth.
- Subscriber Social Security Number.
- Dependent Name.
- Dependent Date of Birth.
- Dependent Social Security Number.
- Dependent Relationship to Subscriber.
- Insurer/Underwriter/TPA Name and Address.
- Insurer/Underwriter/TPA Group Number.
- Insurer/Underwriter/Group Name.
- Prescription Drug Coverage.
- Policy Number.
- Effective Date of Coverage.
- Employer Name, Employer Identification Number (EIN) and Address.
- Employment Status.
- Amounts of Payment.

To administer the Medicare Secondary Payer provision at 42 USC 12395(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address.
- Beneficiary's Date of Birth.
- Beneficiary's Social Security Number.
- Name of Insured.
- Insurer Name and Address.
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement.
- Insured's Policy Number.
- Effective Date of Coverage.
- Date of accident, injury or illness.
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers compensation settlements.
- Employer Name and Address (Workers' Compensation only).
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payer in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment. Examples of prohibited uses would include but are not limited to; creation of a mailing list, sale or transfer of data.

—To administer the MSP provisions more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, TPAs, and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number.
- Dependent Name.
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance.
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer.
- Dates of employment including termination date, if appropriate.
- Number of full and/or part-time employees in the current and preceding calendar years.

• Employment status of subscriber, for example full or part time, self employed.

(23) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

(24) To servicing Fiscal Intermediary/Carrier banks, Automated Clearing Houses, VANs and provider banks to the extent necessary to transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information. See SUPPLEMENTARY INFORMATION.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper forms and/or electronic media.

RETRIEVABILITY:

The system is indexed by health insurance claim number. The record is prepared by the hospital or other provider with identifying information received from the beneficiary to establish eligibility for Medicare and document and support payments to providers by the intermediaries. The bill data are forwarded to the Health Care Financing Administration, Bureau of Data Management and Strategy, Baltimore, MD, where they are used to update the central office records.

SAFEGUARDS:

Disclosure of records is limited. Physical safeguards are established in accordance with Department standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with HHS Information Resource Management (IRM) Circular #10, Automated information Systems Security Program, and HCFA Automated Information Systems (AIS) Guide, System Security Policies.

RETENTION AND DISPOSAL:

Records are closed out at the end of the calendar year in which paid, held 2 more years, transferred to the Federal Records Center and destroyed after another 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Director, Bureau of Program Operations, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the social security office nearest the requester's residence, the appropriate intermediary, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance number and name as shown on social security records. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought. These procedures are in accordance with Department Regulations, 45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. These procedures are in accordance with Department Regulations, 45 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained by the provider from the individual or, in the case of some Medicare secondary payer situations, through third party contacts. The medical information is entered by the provider of medical services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–17621 Filed 7–20–94; 8:45 am]

BILLING CODE 4120–03–M

Social Security Administration

Privacy Act of 1974; Report of Revised System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Revision to a system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e) (11)), we are issuing public notice of our intent to revise the name and description of a system of records entitled "Master Files of Social Security Number Holders, HHS/SSA/OSR, 09–60–0058" (last published at 58 FR 35025, June 30, 1993).

DATES: The proposed changes will become effective as proposed, without further notice on August 30, 1994, unless we receive comments on or before that date which would warrant our preventing the changes from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Hanna, Social Insurance Specialist, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, telephone (410) 966–7077.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Revision

We are changing the name of the system of records and the description of its purpose to clarify the fact that it includes applications for Social Security numbers (SSNs) submitted with suspicious or fraudulent evidence, as well as the records of individuals who have applied for and been assigned SSNs. The vast majority of SSN applications with complete evidence are soon approved and SSNs are assigned to the applicants in a few days. In some cases, however, an application may be held and a record maintained for up to 120 days while SSA determines whether the evidence of identity, age or citizenship/alien status is proper and authentic. SSA disallows applications which are supported by fraudulent documents, and maintains records of such applications. These records prevent individuals whose applications are supported by fraudulent or suspicious documents from obtaining SSNs by visiting other SSA offices which might unwittingly accept these documents.

Besides changing the name of the system and showing that its purpose includes protecting against SSN applications supported by suspicious or fraudulent evidence, we have changed some of the other language:

• To show that the system covers paper applications for SSNs as well as electronic records, and

• To explain how a record is retrieved when it does not include an SSN.

II. Effect of the Proposed Changes on Individual Rights

The proposed changes will clarify the types of information which SSA maintains about persons who apply for SSNs. They will have no effect on individuals' rights.

Dated: July 12, 1994.

Shirley S. Chater,

Commissioner of Social Security.

09-60-0058

SYSTEM NAME:

Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 N. Greene Street, Baltimore, MD 21201.

Records may also be maintained at contractor sites (contact the system manager at the address below to obtain contractor addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains a record of each individual who has applied for and obtained a Social Security number (SSN) and of each individual whose application was supported by documents which are suspected to be fraudulent and are being verified with the issuing agency, or have been determined to be fraudulent.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all of the information received on original applications for SSNs (e.g., name, date and place of birth, sex, both parents' names, and race/ethnic data), and any changes in the information on the applications that are submitted by the SSN holders. It also contains applications supported by evidence suspected or determined to be fraudulent, along with the mailing addresses of the individuals who filed such applications and descriptions of the documentation which they submitted. Cross-references may be noted where multiple numbers have been issued to the same individual and an indication may be shown that a benefit claim has been made under a particular SSN(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act.

PURPOSE(S):

Information in this system is used by the Social Security Administration (SSA) to assign SSNs. The information also is used for a number of administrative purposes, such as:

- By SSA components for various title II, XVI, and XVIII claims purposes including usage of the SSN itself as a case control number and a secondary beneficiary cross- reference control number for enforcement purposes and use of the SSN record data for verification of claimant identity factors and for other claims purposes related to establishing benefit entitlement;
- By SSA as a basic control for retained earnings information;
- By SSA as a basic control and data source to prevent issuance of multiple SSNs;
- As the means to identify reported names or SSNs on earnings reports;
- For resolution of earnings discrepancy cases;
- For statistical studies;
- By the Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services, for auditing benefit payments under Social Security programs;
- By the HHS Office of Child Support Enforcement for locating parents who owe child support;
- By the National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Safety and Health Act of 1974;
- By the SSA Office of Refugee Resettlement for administering Cuban refugee assistance payments; and
- By the HHS Health Care Financing Administration for administering Title XVIII claims.

Information in this system is also used by SSA to prevent the processing of an SSN card application for an individual whose application is identified as having been supported by evidence that either:

- Is suspect and being verified, or
- Has been determined to be fraudulent.

With this system in place, clerical investigation and intervention is required. Social Security offices are alerted in case an applicant attempting to obtain an SSN might visit other offices and might attempt to find one which would unwittingly accept fraudulent documentation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Employers are notified of the SSNs of employees in order to complete their records for reporting wages to SSA pursuant to the Federal Insurance Contributions Act and section 218 of the Social Security Act.
2. To State welfare agencies, upon written request, of the SSNs of Aid to Families with Dependent Children applicants or recipients.
3. To the Department of Justice (DOJ), Federal Bureau of Investigation and United States Attorneys, for investigating and prosecuting violations of the Social Security Act.
4. To the DOJ, Immigration and Naturalization Service, for the identification and location of aliens in the United States pursuant to requests received under section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).
5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)
6. To the Railroad Retirement Board for:

(a) Administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment; and

(b) Administering the Railroad Unemployment Insurance Act.

7. To the Department of Energy for its study of the long-term effects of low-level radiation exposure.
8. To the Department of the Treasury for:

(a) Tax administration as defined in section 6103 of the Internal Revenue Code (26 U.S.C. 6103); and

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks.

9. To a congressional office in response to an inquiry from the office made at the request of the subject of a record.
10. To the Department of State for administering the Social Security Act in foreign countries through facilities and services of that agency.
11. To the American Institute of Taiwan for administering the Social Security Act on Taiwan through facilities and services of that agency.
12. To the Department of Veterans Affairs (DVA), Philippines Regional Office, for administering the Social Security Act in the Philippines through facilities and services of that agency.

13. To the Department of the Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through facilities and services of that agency.

14. To the Department of Labor for:

(a) Administering provisions of the Federal Coal Mine Health and Safety Act; and

(b) Conducting studies of the effectiveness of training programs to combat poverty.

15. To DVA for the following purposes:

(a) For the purpose of validating SSNs of compensation recipients/pensioners in order to provide the release of accurate pension/compensation data by DVA to SSA for Social Security program purposes; and

(b) Upon request, for purposes of determining eligibility for or amount of DVA benefits, or verifying other information with respect thereto.

16. To Federal agencies which use the SSN as a numerical identifier in their recordkeeping systems, for the purpose of validating SSNs.

17. To DOJ, to a court, to another tribunal, or to another party before such tribunal, when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the tribunal, or other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were disclosed.

Wage and other information that is subject to disclosure provisions of the Internal Revenue Code (IRC) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

18. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

19. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

20. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Social Security Act).

21. To third party contacts when the party to be contacted has, or is expected to have, information which will verify documents when SSA is unable to determine if such documents are authentic.

22. Upon request, information on the identity and location of aliens may be disclosed to the DOJ, Criminal Division, Office of Special Investigations, for the purpose of detecting, investigating, and, when appropriate, taking legal action against suspected Nazi war criminals in the United States.

23. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub. L. 97–86).

24. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine used only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

25. Validated SSN information may be disclosed to organizations or agencies such as prison systems that are required by law to furnish SSA with SSN information.

26. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

27. Disclosure of SSNs and dates of birth may be made to the DVA or third parties under contract to that agency for the purpose of conducting DVA medical research and epidemiological studies.

28. SSN information may be disclosed to the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), when OPM needs the information in administering its pension program for retired Federal Civil Service employees.

29. Upon request by the Department of Education, SSNs which are provided by students to postsecondary educational institutions may be verified as required by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1091).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in paper form (e.g., paper lists, punch cards, Forms SS–5 (Application for an SSN), and systems generated forms); magnetic media (e.g., magnetic tape and disk with on-line access); and in microfilm and microfiche form.

RETRIEVABILITY:

Records of SSN holders are indexed by both SSN and name. Records of applications that have been denied because the applicant submitted fraudulent evidence, or that are being verified because the evidence is suspected to be fraudulent, are indexed either by the applicant's name plus month and year of birth, or by the applicant's name plus the eleven-digit reference number of the disallowed application.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Automated Data Processing Manual, "Part 6, ADP Systems Security." This includes maintaining the magnetic tapes and disks within a secured enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and Field Office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm, microfiche, and paper files are accessible only by authorized personnel who have a need for the records in the performance of their official duties.

Expansion and improvement of SSA's telecommunications systems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to

permit the identification of terminal users.

RETENTION AND DISPOSAL:

All paper forms are retained for 5 years after they have been filmed or entered on tape and the accuracy has been verified. They then are destroyed by shredding. All tape, disks, microfilm, and microfiche files are updated periodically. Out-of-date magnetic tapes and disks are erased. Out-of-date microfiches are disposed of by applying heat.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Data Support and Enumeration, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record pertaining to him/her by providing his/her name, signature, and SSN to the address shown under "System Manager" above. (Furnishing the SSN is voluntary, but it makes searching for an individual's record easier and avoids delay.) If the SSN is unknown or no SSN has been assigned because the evidence presented with the application is being verified or has been determined to be fraudulent, the individual should provide name, signature, date and place of birth, sex, mother's birth name, and father's name, and evidence of identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents which they are seeking. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, requesters should reasonably identify the record, specify the information which they are contesting, and state the corrective action sought and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from SSN applicants (or individuals acting on their behalf). The SSN itself is assigned to the individual as a result of internal processes of this system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94-17771 Filed 7-20-94; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-94-3798; FR-3755-N-01]

Discrimination in Property Insurance Under the Fair Housing Act; Public Meetings

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Public Meetings.

SUMMARY: HUD is charged with the administration and enforcement of the Fair Housing Act, including the promulgation of Fair Housing Act, including the promulgation of Fair Housing Act regulations. Prior to promulgation of a regulation on nondiscrimination in property insurance practices, HUD is seeking public comment on property insurance practices that may or may not be discrimantory, as well as other comments related to subject of property insurance. This notice announces, the dates, and locations of public meetings that will address the subject of discrimination in property insurance under the Fair Housing Act.

DATES: See the Supplementary Information section of this notice for the dates, locations and times of the meetings.

FOR FURTHER INFORMATION AND REQUESTS TO MAKE ORAL PRESENTATION CONTACT: Peter Kaplan, Director, Office of Regulatory Initiatives an Federal Coordination, Office of Fair Housing and Equal Opportunity, HUD, Room 5240, 451 Seventh Street, S.W., Washington DC 20410-0500, telephone (202) 708-2904 (not a toll free number). The toll free TDD number is 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD is committed to initiatives that will provide access to capital and economic empowerment for all Americans. HUD has launched creative programs to stem disinvestment in cities and disadvantaged communities throughout the country, increase the flow of capital into these communities, and create communities of opportunity throughout the nation.

Among HUD's priorities are: (1) Empowerment of local communities by supporting local economic development efforts; (2) expansion of housing opportunities through partnerships with State and local government and private developers and financial institutions; and (3) opening housing markets through vigorous enforcement of the Federal Fair Housing Act (42 U.S.C. 3601-3619). A critical component of these initiatives is assuring access to capital for homeownership and business development. Assuring fair access to property insurance is essential. Insurance is necessary for access to capital.

HUD is charged with the administration and enforcement of the Fair Housing Act, including the promulgation of regulations. Prior to promulgation of a regulation on nondiscrimination in property insurance under the Fair Housing Act, HUD is seeking public comment on: property insurance practices that may or may not be discriminatory; specific provisions within the regulation; disclosure requirements and best practices.

This notice announces four public meetings to be conducted by the Assistant Secretary for Fair Housing and Equal Opportunity of HUD (Assistant Secretary) to hear oral presentations from interested parties on discrimination in property insurance under the Fair Housing Act.

II. Dates, Locations and Times of Public Meetings

First Meeting

The first meeting will be held in Chicago, Illinois, on Thursday, August 18, 1994, in Court Room 2721 of the Everert Dirksen Federal Building, 219 S. Dearborn St. Chicago, Illinois 60604.

Second Meeting

The second meeting will be held in San Francisco, California, on Thursday, September 22, 1994, at the Philip Burton Federal Building and U.S. Court House, 450 Golden Gate Avenue, San Francisco, California 36003. The room will be announced.

Third Meeting

The third meeting will be held in Atlanta, Georgia, on Tuesday, October 18, 1994, in Room 1707 of the Richard B. Russell Federal Building, 75 Spring St. SW, Atlanta, Georgia 30303. The room will be announced.

Fourth Meeting

The fourth meeting will be held in Boston, Massachusetts, on Thursday, October 27, 1994 at the Thomas P. O'Neill, Jr. Federal Building, 10 Causeway St. Boston, Massachusetts 02222. The room will be announced.

The meeting will convene at 9 a.m. and adjourn at 4 p.m. unless otherwise extended by the Assistant Secretary or duly designated presiding officer.

III. Meeting Procedures

Attendance is open to the public but limited space is available. The meetings facilities are accessible to persons with mobility impairments. Sign language interpreters and assistive listeners will be available for individuals with hearing impairments.

Individuals, groups and organizations that wish to make an oral statement at a meeting should make a written request to do so and should forward their oral statement five work days in advance of the meeting to HUD as indicated below.

Opportunity for oral statements at the meetings will include, but not be limited to, those who have submitted written remarks. To the extent that time permits and within the discretion of the Assistant Secretary of the presiding officer, other members of the public who wish to present oral statements will be allowed to do so.

Dated: July 15, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–17716 Filed 7–20–94; 8:45 am]

BILLING CODE 4210–28–M

Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3661; FR–3566–N–05]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Availability of Final Report.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (P.L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. App 2). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing; and make recommendations in its final report to HUD and Congress for the establishment of reasonable criteria for occupancy, so that HUD could revise its standards, regulations, and guidelines to provide accurate and complete guidance to owners and managers of federally assisted housing.

The preliminary report of the task force was made available by a **Federal Register** Notice published on August 31, 1993, at 58 FR 45905. The public was given 60 days to submit comments on the preliminary report.

This notice is to provide the public with the Executive Summary of the Report and announce the availability of the Task Force's Final Report from the Fair Housing Clearinghouse (1–800–343–3442) or (TDD) (1–800–927–9275), 1600 Research Boulevard, Rockville, Maryland 20850. This Report reflects the opinions of the Task Force and does not necessarily represent Departmental policy or procedures. The Department is presently considering all the recommendations and expects to publish rules and guidance addressing the issues raised in the Report.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Director, Office of Program Standards and Evaluation, Office of Fair Housing and Equal Opportunity, Room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–0288 (voice) or (TDD) (202) 708–0113 (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Executive Summary of the Report.

Preface—Funding and Finance Issues

Throughout its deliberations and recommendations, one theme about which Occupancy Task Force members agreed was that low-income people should have more housing choices than they do at present. The issue of housing choice, along with many other concerns the Task Force addressed, is complicated by scarcity of resources. The Task Force therefore proposes a number of recommendations aimed specifically at funding and cost issues.

Chapter 1—The Application Process

In preparing its report, the Occupancy Task Force decided that it would be more useful to begin by addressing the sequential tenancy process: the application process, occupancy and eviction. The first stage of this process, during which applicants are screened for eligibility and tenant selection criteria, is an extremely important one in that the applicants who are selected will become members of the resident community and those who are not selected will be denied the opportunity to live in federally assisted housing. Thus, the Task Force spent significant time considering the issues contained in the Application Process Chapter. In doing so, the Task Force balanced the rights of housing providers to choose residents who will fulfill their lease obligations and the rights of applicants to be chosen fairly.

In addition to including the Task Force's specific recommendations, Chapter One describes the application process from start to finish in order to provide a full context for the recommendations. In particular, the application process issues addressed by the Task Force include the following:

- Guiding principles for the application process;
- Accessibility of the application process and the need for plain language forms and documents;
- Marketing;
- Waiting lists;
- Occupancy standards;
- Rent reform;
- Screening applicants, including applicants with non-traditional tenant histories;
- Reasonable accommodations in the application and screening process;
- Disability-related inquiries; and
- Determinations involving alcohol and controlled substances.

Chapter 2—Management

The application process ends when the housing provider makes the decision to admit an applicant. Next, the housing management process begins, encompassing orientation, execution of the lease, move-in, occupancy and lease compliance. The Task Force addressed the following topics within the housing management process;

- Guiding Principles for the housing management process;
- The lease;
- Preventing and addressing lease violations;
- Unit transfers; and
- Retention of housing during hospitalization or residential treatment.

Chapter 3—Evictions

Eviction from public or assisted housing is a very serious sanction; it not only displaces the resident, it also discontinues the subsidy that makes housing affordable to that resident. Eviction is nonetheless occasionally necessary. Experience shows that some

individuals are not willing to meet the essential obligations of tenancy and must be removed in order to preserve the viability of the housing development. Given the shortage of public and assisted housing, and the difficulty of preserving this housing, the Task force also stresses the need to remove those whose conduct is destructive to the development.

An equitable eviction policy will authorize the eviction, in appropriate circumstances, of those residents whose conduct violates essential provisions of the lease, those whose conduct repeatedly violates minor provisions of the lease, and those who allow others to do so. The Task Force reviews the proper use of eviction as focusing generally on whether and how seriously the conduct in question adversely affects the housing community. In addition, the Task Force recommends that except as noted, the status, regulations, handbooks and lease provisions regarding eviction not be changed.

The report addresses the following topics:

- Alternatives to eviction;
- Alternatives after eviction, to prevent homelessness;
- Notices;
- Drug abuse and drug related crime;
- Criminal activity as grounds for eviction;
- Former users of illegal drugs;
- Fraud;
- Minor crimes and off-premises criminal activity;
- Public housing grievance procedure;
- Residents' liability for the actions of others;
- Consideration of all the facts and circumstances;
- Criminal activity prior to admission;
- Subsidy termination—certificate and voucher programs; and
- Subsidy termination—assisted housing.

Chapter 4—Reasonable Accommodations

Reasonable accommodation is a creative, challenging and evolving area of disability law and practice, affecting every aspect of admissions, occupancy and evictions. The Task Force believes that, despite many uncertainties as to what is required by law, it is possible to craft sound, basic, reasonable accommodation policies and procedures which will satisfy the intent of the law without subjecting either persons with disabilities or housing providers to unintended burdens.

This chapter tackles a wide range of reasonable accommodations issues with the intention of providing guidance on the procedural elements essential to achieving compliance. Specifically, the chapter is organized as follows:

- Regulatory and case-law references that provide background on the concept of reasonable accommodation followed by brief discussion of program accessibility requirements (the self-evaluation and transition plan);
- Discussion of a definition of reasonable accommodation;
- Statement of principles applicable to reasonable accommodations, drawn from current law and regulation and describing both affirmative requirements and the regulatory limits placed on the implementation of the concept;
- Examination of the regulatory limits that apply to accommodations (undue burdens and fundamental alterations);
- Recommendations on effective implementation of reasonable accommodations;
- Review of diverse reasonable accommodation issues including disagreements about types of accommodation, accommodations in the occupancy cycle, procedures related to service animals, and the use of interpreters; and
- Recommendations for HUD Technical Assistance.

Chapter 5—Fundamental Alterations

Both Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988 anticipate that, at some level, the compliance action requested or required may exhaust available resources or so alter the housing program that the action becomes infeasible. Housing providers are required to judge the feasibility of compliance actions against two criteria; fundamental alternations in the nature of the program and undue financial and administrative burdens. This chapter frames these issues in the context of program operations and management.

Fundamental alternations in the nature of the program and undue financial and administrative burdens raise issues of resource management, capital planning, and ultimately, program funding. Many compliance actions can be absorbed with existing program funds, but the cost of making some programs accessible and responding to some requests for accommodations will require that Congress recognize the need for increased funding levels. Greater flexibility in HUD's rules governing the use of operating and capital budgets is also required. Specific changes in budget operating procedures and formula calculations are recommended.

The Task Force also makes a general recommendation to increase the level of modernization funds for both public and assisted housing.

This chapter includes:

- Examples of actions that might result in fundamental alternations;
- Suggestions for evaluating fundamental alternations in light of the program purpose and any services delivered on site;
- Treatment of profit at assisted housing properties;
- Principles that explain how the undue burdens test is unique to each reasonable accommodation request and how to judge the impact of compliance actions against available program resources;
- Use of operating and capital budgeting line items for reasonable accommodation and other compliance requirements;
- Program factors to consider when assessing undue burdens;
- Procedural frameworks for evaluating undue financial burdens in public and assisted housing; and
- A plan for identifying unfunded accessibility needs.

Chapter 6—Certificates and Vouchers

During the course of its deliberations, the Task Force generally discussed issues that could be addressed in a unified manner for all federally subsidized housing programs, such as the need for plain language forms and communications. Thus, the Task Force wishes to make clear that all such global recommendations, such as the need for plain language and timely and adequate notice, apply in the Section 8 Certificate and Voucher programs.

However, the Task Force also dealt with issues in the public housing and project-based assistance programs, such as admissions procedures, that could not be so readily carried over into the context of the Certificate and Voucher programs; this posed a particular challenge. In those programs the housing authority does not admit an applicant to housing, is not the resident's landlord and does not evict. Instead, in a delicate balance among the three parties involved, the housing agency provides a rental subsidy to the participant and, as a quid pro quo to the private landlord's receipt of a portion of the market rent, enforces specific regulatory provisions incorporated into the Housing Assistance Payments contract. Between the private landlord and the resident-recipient flow another set of rights and obligations, arising from the lease, the HAP contract, federal law and regulation and state law.

In this chapter, the Task Force has addressed only those issues that were of particular concern to Task Force members or were congruent with issues raised in the project-based context. The Task Force has not attempted a wholesale critique of the Certificate and Voucher programs not wholly rewritten any area of program administration. Nor has the Task Force, in particular, dealt with the proposed regulations to consolidate the Certificate and Voucher programs, which have not yet been implemented and so do not represent current practice. This Chapter includes recommendations concerning:

- Expirations/extensions of time;
- Exemptions to fair market rents;
- Assistance for individuals with disabilities;
- Waiting lists;
- Evictions/terminations of assistance;
- Lease terminations in the first year of the lease;
- Damage and vacancy claims;
- Housing quality standards;
- Reasonable accommodations; and
- Portability/mobility.

Chapter 7—Support Services

This chapter examines the intersection of housing and services and makes recommendations to Congress, HUD and the Department of Health and Human Services (HHS) about improving coordination, access, and delivery of services in an independent housing context. Many people who live in federally subsidized housing need, want and are eligible for services that have some form of federal subsidy or some form of federal mandate or encouragement. Services could help maintain tenancies and independence, promote economic and educations opportunity, and generally enhance the lives and opportunities of those who live in federally subsidized housing. The Task Force believes that one major problem is that the housing and service systems often do not understand one another or work in a coordinated way to help the same individual. Because issues of coordination can be addressed only if HUD and HHS work together, this chapter makes recommendations to HHS even though the Task Force was created to advise Congress about HUD matters.

Part A of this chapter covers general services and housing issues and recommendations to ensure the provision of services to residents. Part B reviews the planning and funding complexities of federal, state and local programs, including recommendations to HUD and HHS. Part C discusses collaborative agreements between housing and services providers.

Chapter 8—Clearinghouse

In a number of discussions, the Task Force addressed the problems associated with the lack of effective coordination among housing providers, supportive service providers, tenant representatives and advocates. We were also troubled by the general unavailability of adequate, reliable, technical assistance on reasonable accommodation procedures and substance.

The Task Force concluded that one way of addressing both problems was to recommend that Congress require that each state receiving federal housing assistance establish a model clearinghouse program, to be funded by the HOME and CDBG programs. This chapter discusses the scope and purposes of such clearinghouses.

Chapter 9—Confidentiality

Because every housing file contains personal information about applicants and residents, privacy and confidentiality and persistent concerns. The civil rights and housing program laws and regulations all address some aspects of privacy and confidentiality, but they leave many questions unanswered. Thus, the Task Force recommends that HUD research the variety of questions and issues that the chapter lists, consult with interested parties, and issue prompt and responsive guidance. The questions include issues relating to law enforcement, reasonable accommodations, resident screening and eviction committees, state and local laws, and service coordinator and provider responsibilities.

Chapter 10—NIMBY

NIMBY, the Not In My Back Yard syndrome, both contributes to and is a form of housing discrimination. Like all forms of discrimination, NIMBY has ripple effects on subsidized housing providers. When a neighborhood association successfully prevents people with disabilities, people with low incomes, and people with no homes from moving in, it not only exacerbates the pressure on subsidized housing providers to house these groups, but it reinforces the stereotype that subsidized housing exists for the purpose of keeping "the undesirables" out of "decent" neighborhoods.

NIMBY, like the dearth of affordable housing, has permeated the Task Force's deliberations. Thus, the purpose of this chapter is two-fold. It describes how community perceptions and stereotypes can limit housing opportunities for individuals and families with low- and very low-incomes; while emphasizing that every individual and family should have an opportunity to choose from a variety of housing options, including private, public, federally-assisted, scattered site and supportive housing. Second, this chapter offers a number of specific recommendations to Congress and the Executive Agencies with regard to housing discrimination. This chapter is not an enforcement of one type of housing option over others but rather an enforcement of individual choice and empowerment. The Task Force was unanimous in its identification of discrimination as a major problem for everyone involved in the housing industry.

Closing Note on Recommendations to HUD

Most of the Task Force's recommendations for HUD action suggest that HUD develop "guidance" for housing providers. The term "guidance" means examples, models, and samples, of letters, forms, procedures, systems, etc., designed to help housing providers without imposing new requirements on them. The Task Force recommendations for guidance should not be interpreted by HUD as creating new requirements.

Dated: June 23, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–17703 Filed 7–20–94; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–4210–05]

Intent to Amend the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR 1610.2(a), notice is hereby given that the Bureau of Land Management proposes to change the Multiple Use Classification from Class L to Class M for the following public lands:

San Bernardino Meridian, Imperial County, California

T. 16S., R. 16 E.,
Sec. 25, SE¼NW¼.

DATES: Written comments on this proposed plan amendment will be accepted until August 22, 1994. Please

address comments to G. Ben Koski, Area Manager, Bureau of Land Management, El Centro Resource Area, 1661 South 4th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Linda Friedrich, El Centro Resource Area, 1661 South 4th Street, El Centro, California, 92243, (619) 353–1060.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 20, 1992 (Vol. 57, No. 55, p. 9743), a Notice of Intent was published initiating the 1992 Review of the California Desert Conservation Plan and inviting requests for amendments to the Plan from individuals, public and private organizations, and the Bureau's own observation. Those amendment proposals were included on the agenda at the public meeting of the California Desert District Advisory Council Meeting on June 3–4, 1992. A Notice was published in the **Federal Register** of May 22, 1992 (Vol. 57, No. 100, p. 21820) announcing the meeting.

The proposal to reclassify the above-described land from Multiple Use Class L to Class M was presented at the meeting and no adverse comments were received. This Notice of Intent is being published to re-initiate the public scoping period. The forty-acre parcel described above is being considered for direct sale at fair market value to General Farm Investment Company, owner and operator of the farmland that borders three sides of this land. The subject land extends into the farming operations and is an obstacle to efficient farming and irrigating. Disposal would establish a more manageable ownership boundary benefiting both the Bureau of Land Management and General Farm. The proposed plan amendment and decision on disposal will be determined through environmental analysis in accordance with 43 CFR 1610.5–5.

Dated: July 13, 1994.

Jim Talent,

Acting Area Manager.

[FR Doc. 94–17748 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–40–M

[WY–040–94–4350–08]

Emergency Closure in the Arabis pusilla Habitat Management Area, Green River Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Closure in the *Arabis pusilla* Habitat Management Area, Green River Resource Area, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that, effective immediately, all public lands within the *Arabis pusilla* Habitat Management Area (HMA) are closed to all mechanized/non-motorized vehicular use to preserve the habitat of this Candidate plant species. This species, commonly called the small rockcress, is being proposed as Endangered by the U.S. Fish and Wildlife Service. Its single known population is located at Pine Creek, near South Pass, Wyoming, and consists of approximately 1000 individuals. Approximately 500 acres of land within the Habitat Management Area (HMA) exclosure will be closed.

Vehicular use of the existing roads and trails in the area is causing unacceptable levels of damage to these plants and their limited habitat adjacent to the roads and trails. Unauthorized vehicular use off these roads is also impacting the species. Due to the extremely small population number, and the fragile nature of the plant, damage from vehicular activity could be causing irreversible impacts to the species.

The *Arabis pusilla* Habitat Management Plan calls for elimination of all motorized vehicle activity within the HMA exclosure.

EFFECTIVE DATE: The closure will become effective July 21, 1994 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: William LeBarron, Area Manager, Green River Resource Area, 1993 Dewar Drive, Rock Springs, Wyoming 82901. Telephone (307) 362–6422.

SUPPLEMENTARY INFORMATION: Monitoring of the Habitat Management Area has revealed that violations of the "existing road and trail" ORV designation commonly occurs and causes adverse impacts to the species.

The emergency closure applies to all BLM administered public lands within the *Arabis pusilla* Habitat Management Area located approximately 20 miles southwest of the town of South Pass, Wyoming, in T29N, R101W, sections 26, 27 and 35, Sixth Principle Meridian. The closure prohibits use of all mechanized motorized and nonmotorized vehicles within the habitat management area, with the exception of:

(1) Any Federal, State, or local officers engaged in fire, military, emergency, or law enforcement activities.

(2) BLM employees engaged in official duties.

Authority for closure orders is provided under 43 CFR Subpart 8364.1. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

John S. McKee,

Associate District Manager.

[FR Doc. 94–17718 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–22–M

[OR–943–4210–06; GP4–219; OR–45398]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 80 acres of public lands out of Federal ownership. This action will also open 160 acres of the 200 acres of reconveyed lands, to surface entry, and 40 acres to mining and mineral leasing. Of these lands, 160 acres have been and continue to be open to mining and mineral leasing. The remaining 40 acres fall within the Crooked Wild and Scenic River boundary and will not be open to surface entry.

EFFECTIVE DATE: August 26, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7170.

SUPPLEMENTARY INFORMATION: 1. Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, a patent has been issued transferring 80 acres in Crook County, Oregon, from Federal to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 16 S., R. 16 E.,
Sec. 29, N½SE¼ and S½SW¼;
Sec. 31, SW¼SE¼.

The areas described aggregate 200 acres in Crook County.

2. The land lying within one-quarter mile of the river in the land described below falls within the Crook Wild and Scenic River withdrawal boundary and will remain closed to surface entry:

Willamette Meridian

T. 16 S., R. 16 E.,
Sec. 29, NE¼SE¼.

The area described contains 40 acres in Crook County.

3. At 8:30 a.m., on August 26, 1994, the lands described in paragraph 1, except as provided in paragraph 2, will be opened to operation of the public land laws generally, subject to valid

existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 26, 1994, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on August 26, 1994, the land described below will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 16 S., R. 16 E.,
Sec. 31, SW¼SE¼.

The area described contains 40 acres in Crook County.

5. At 8:30 a.m., on August 26, 1994, the land described in paragraph 4 will be opened to applications and offers under the mineral leasing laws.

Dated: July 12, 1994.

William E. Bliesner,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–17747 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–33–P

[AZ–054–04–4210–05; AZA 28563]

Arizona: Realty Action, Classification of Public Lands for Lease or Conveyance for Recreation and Public Purposes; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Arizona.

SUMMARY: The following public lands in Mohave County, Arizona, have been examined and found suitable for classification for lease or conveyance to Topock Elementary School District #12 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Topock Elementary School District #12 proposes to use the following land for a middle school:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 21 W.,
Sec. 14, lots 4 & 5, NW¼NW¼SE¼.
Containing 36.71 acres, more or less.

The lands are not needed for Federal purposes. Leases or conveyance is consistent with the current BLM land use planning and would be in the public interest.

The lease/patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. Those rights for road purposes granted to the Mohave County Board of Supervisors by Right-of-Way AZA 021336.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all forms of appropriation under the pubic land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

Classification Comments: Interested parties may submit comments involving the suitability of the lands for a middle school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the applications and plan of developments, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a middle school.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Janice Easley, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (602) 855–8017.

Dated: July 13, 1994.

Judith I. Reed,

District Manager, Yuma District Office.

[FR Doc. 94–17749 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–32–M

[MT–030–4210–05–P]

Realty Action, Sale of Public Land in North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public land in North Dakota.

SUMMARY: The following lands have been found suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C., 1713), at not less than the estimated Minimum Bid Price.

DATES: September 22, 1994.

ADDRESSES: 2933 Third Avenue West; Dickinson, North Dakota 58601.

FOR FURTHER INFORMATION CONTACT: William C. Monahan, Dakotas District Office, 701–225–9148.

SUPPLEMENTARY INFORMATION:

Parcel	Legal description
	Fifth Principal Meridian
NDM83153	T. 154 N., R. 75 W., Sec. 19: NWNE, 40.00 acres, McHenry County, Minimum Bid Price $1,400.
NDM83154	T. 154 N., R. 76 W., Sec. 24: NENE, 40.0 acres, McHenry County, Minimum Bid Price $1,400.
NDM83155	T. 154 N., R. 76 W., Sec. 26: S2NE, 80.0 acres, McHenry County, Minimum Bid Price $3,600.
NDM83156	T. 155 N., R. 75 W., Sec. 19: Lot 3, 34.52 acres, McHenry County, Minimum Bid Price $1,550.
NDM83157	T. 155 N., R. 75 W., Sec. 31: NWSE, 40.0 acres, McHenry County, Minimum Bid Price $1,800.
NDM83158	T. 155 N., R. 75 W., Sec. 33: NESW, 40.0 acres, McHenry County, Minimum Bid Price $1,800.
NDM83159	T. 156 N., R. 77 W., Sec. 10: NWSW, 40.0 acres, McHenry County, Minimum Bid Price $1,800.

Parcel	Legal description
NDM83169	T. 157 N., R. 75 W., Sec. 15: SWSW, 40.0 acres, McHenry County, Minimum Bid Price $2,400.
NDM83160	T. 152 N., R. 93 W., Sec. 8: Lot 4, 14.95 acres, McKenzie County, Minimum Bid Price $1,600.
NDM83161	T. 153 N., R. 98 W., Sec. 24: SWSE, 40.00 acres, McKenzie County, Minimum Bid Price $2,100.
NDM83170	T. 153 N., R. 100 W., Sec. 18: Lot 3, NESW, 79.85 acres, McKenzie County, Minimum Bid Price $4,200.
NDM83162	T. 153 N., R. 93 W., Sec. 26: NESE, 40.0 acres, Mountrail County, Minimum Bid Price $1,650.
NDM83163	T. 154 N., R. 94 W., Sec. 25: NWSW, 40.0 acres, Mountrail County, Minimum Bid Price $1,650.
NDM83164	T. 155 N., R. 94 W., Sec. 35: SWNW, 40.0 acres, Mountrail County, Minimum Bid Price $1,650.
NDM83228	T. 135 N., R. 86 W., Sec. 34: NWNW, 40.0 acres, Grant County, Minimum Bid Price $2,200.
NDM83241	T. 136 N., R. 69 W., Sec. 8: SWNE, 40.0 acres, Logan County, Minimum Bid Price $50.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

The lands will be offered for sale at public auction beginning at 10 A.M., MDT, on Thursday, September 22, 1994, at 2933 Third Avenue West, Dickinson, North Dakota 58601. The sale will be by modified competitive procedures. Tract lessees or adjoining land owners must submit a bid the day of sale to retain preference rights. The sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Dakotas District Office at 2933 Third Avenue West, Dickinson, North Dakota 58601, no later than 4:30 P.M., MDT, on Wednesday, September 21, 1994. Bid envelopes must be marked on the left front corner with the parcel number and the sale date. Bids must be for not less than the appraised Minimum Bid Price specified in this Notice. Each sealed bid shall be accompanied by a certified check, postal money order, or cashier's check made payable to the United States Department of the Interior, BLM, for not less than 10 percent or more than 30 percent of the amount of the bid. Applicants should submit a Statement of Eligibility form with the bid.

Bids on unsold parcels will be opened each Wednesday after the date of the sale at 10:00 a.m., MDT, until the parcels are sold. The terms and conditions applicable to the sale are:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890, (26 Stat. 291; 43 U.S.C. 945).

3. The patents will be subject to all valid existing rights including rights-of-way.

Federal law requires that all bidders must be U.S. citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the U.S. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at the public auction. The apparent high bidder, lessees and adjoining land owners will be notified. Lessees and adjoining land owners will have five (5) working days from the date of the sale to exercise the preference consideration given to meet the high bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions. Once the qualified high bidder is determined, the balance of the purchase price shall be paid within 180 days of the date of the sale. Failure to submit the full bid price prior to, but not including the 180th day following the day of sale, shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale.

Detailed information concerning the sale, including the reservations, procedures for conditions of sale, and planning and environmental documents, is available at the Dakotas District Office, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

Comments

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Dakotas District, at the above address. In the absence of objections, this proposal will become the final determination of the Department of the Interior.

Dated: July 14, 1994.

Douglas J. Burger,

District Manager.

[FR Doc. 94–17769 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–DN–P

[NV–050–4210–06, N–57922]

Correction of Scoping Period for the Caliente MFP/Nellis Air Force Range Resource Plan Proposed Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of scoping period.

SUMMARY: The Bureau of Land Management's (BLM) Las Vegas District is notifying the public of the change in the scoping period for the proposed amendment to the Caliente Management Framework Plan (MFP) and the Nellis Air Force Range Resource Plan (RP) to analyze a proposed withdrawal by the Nellis Air Force Base (please refer to the BLM's "Notice of Intent and Scoping Period," published in the **Federal Register**, pages 32216–17, Vol. 59, No. 119, Wednesday, June 22, 1994).

DATES: The new scoping period will be from July 27, 1994 to August 26, 1994.

ADDRESSES: All written comments and concerns the public may have with this proposed amendment and environmental assessment must be mailed to: Bureau of Land Management, Attention: District Manager, P.O. Box 26569, Las Vegas, Nevada 89126, or delivered to the Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada by the above ending date.

FOR FURTHER INFORMATION CONTACT: Gary Ryan, Acting District Manager, at the above address or telephone (702) 647–5000.

Dated: July 13, 1994.

Ronald B. Wenker,

Acting State Director, Nevada

[FR Doc. 94–17767 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Dismal Swamp Southeastern Shrew for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Dismal Swamp southeastern shrew. This species is known to occur

in the Dismal Swamp of southeastern Virginia and adjacent North Carolina. The service solicits review and comment from the public on this Draft Plan.

DATES: Comments on the draft Recovery Plan must be received September 6, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Region Five, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, telephone (413) 253–8628.

FOR FURTHER INFORMATION CONTACT: Mary J. Parkin (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Dismal Swamp Southeastern Shrew (*Sorex longirostris fisheri*) Recovery Plan. This new subspecies, listed as threatened in 1986, is known to occur within the Great Dismal Swamp of Virginia and North Carolina. Originally extending over 2200 square miles, the swamp now comprises fewer than 320 square miles. Some 189 square miles of habitat are protected within the Great Dismal Swamp National Wildlife Refuge and adjacent North Carolina State Park land.

Known habitat outside Refuge and Park boundaries is being list to agriculture, silviculture, and urbanization. Within the Refuge, changes in the swamp's hydrologic regime are resulting in succession to a more mesic habitat type, possibly allowing invasion by an upland subspecies (*Sorex longirostris longirostris*), which could ultimately result in genetic extinction of *S.1. fisheri* through interbreeding.

New findings indicate that the Dismal Swamp southeastern shrew may be more widespread than previously thought; this possibility is taken into account by defining dual recovery objectives: (1) To confirm that this shrew subspecies is widely distributed throughout the coastal plain of southeastern Virginia and northeastern North Carolina and is relatively free from threats; or (2) to perpetuate self-sustaining Dismal Swamp southeastern shrew populations within more restricted areas in the wild. The attainment of either of these objectives would enable the shrew's removal from the Federal list of endangered and threatened wildlife and plants.

Conditions that must be met to delist the Dismal Swamp southeastern shrew include either (1) confirmation of the shrew's range, and, if studies confirm that it is restricted to areas of the Great Dismal Swamp; (2) maintenance of six "shrew conservation areas" of at least 5,000 acres each; (3) management of hydrological conditions within shrew habitat; (4) effective long-term management of other factors affecting the species; and (5) sufficient data to indicate that "genetic swamping" by *S.1. fisheri* is not occurring.

These conditions will be met through distributional and taxonomic studies, hydrological studies, implementation of management beneficial to the shrew within Refuge and Park boundaries, protection of shrew habitat outside Refuge boundaries, and a public information program.

The draft Recovery Plan is being submitted for agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 12, 1994.

Ralph Pisapia,

Acting Regional Director.

[FR Doc. 94–17744 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–55–M

Opportunity to Review and Comment on Revised Draft Recovery Plan for the Masked Bobwhite Quail Is Reopened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the reopening of a public review and comment period on a revised draft recovery plan for the masked bobwhite quail (*Colinus virginianus ridgwayi*) which the Service listed as an endangered species on March 11, 1967 (32 FR 4001). The Notice of Availability for review and comment was published on May 5, 1994. The 60-day period closed on July 5, 1994. Via this notice, the comment period will reopen on the date of this publication and remain open until September 1, 1994. All comments received during the initial period available for comments and from date of this publication to September 1, 1994, will be considered prior to finalization of the revised recovery plan.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Refuge Manager, Buenos Aires National Wildlife Refuge, P.O. Box 109, Sasabe, Arizona 85633. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. William (Bill) Kuvlesky, Jr., U.S. Fish and Wildlife Service Biologist, telephone (602) 823–4251, or at the above address.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: July 11, 1994.

John G. Rogers,

Regional Director.

[FR Doc. 94–17745 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Privacy Act of 1974—Deletion of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records a notice describing records maintained by the Office of Surface Mining Reclamation and Enforcement. The system of records notice being abolished is entitled "Applicant/Violator System (AVS)—Interior, OSMRE–9" It was previously published in the **Federal Register** on November 16, 1989 (54 FR 47734). A review of the system of records has determined that the records are not subject to the Privacy Act.

The review was prompted by an opinion issued by the General Counsel, Office of Management and Budget (OMB), on August 30, 1988, affirming OMB's 1975 guidelines which interpreted the statutory term "individual" to exclude natural persons acting in an entrepreneurial capacity from the coverage of the Privacy Act. A review of the Applicant/ Violator System conducted by the Office of Surface Mining Reclamation and Enforcement indicated that the records contain information about persons in their entrepreneurial capacity and not in their capacity as individuals. Therefore, the notice is being deleted from the Department's compilation of Privacy Act systems of records notices.

This change shall be effective on publication in the **Federal Register**. Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 "C" Street NW., Mail Stop 5412 MIB, Washington, DC 20240, telephone (202) 208–6045.

Dated: July 15, 1994.

Albert C. Camacho,

Director, Office of Administrative Services.

[FR Doc. 94–17750 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32548]

The Indiana Rail Road Company and CSX Transportation, Inc.—Joint Relocation Project Exemption—In Bloomington, Monroe County, IN

On July 11, 1994, The Indiana Rail Road Company (INRD) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad. The transaction, which is the subject of ongoing agreements among INRD, CSX Transportation, Inc. (CSXT), and the City of Bloomington, IN, is to be consummated either by July 21, 1994, or at a later date to be agreed upon in writing among the parties.

The project involves INRD's relocating a portion of its Bloomington Southern Branch track and operations in Bloomington, Monroe County, IN, from the present location to a nearby track owned and operated by CSXT. The relocation of operations covers 3.05 miles on the CSXT line. INRD and CSXT propose to consolidate rail traffic over the CSXT line extending from the CSXT–INRD "Uptown Connection" between the CSXT line and INRD's main east-west line to the CSXT McDoel Yard connection to INRD's Southern Branch near Country Club Road. As part of the relocation INRD will remove a 1.2 mile portion of its Southern Branch track extending south from INRD's main line. INRD trains will operate over the CSXT track to reach industry located on the Southern Branch in southwestern Bloomington. INRD states that a trackage agreement is being formalized with CSXT and copies will be filed with the Commission when the agreement is completed.

The line relocation project will eliminate excess and duplicate railroad facilities, remove unnecessary railroad-street crossings, and furnish the City of Bloomington with a needed roadway corridor to be accomplished by the removal of INRD track. INRD asserts that service to shippers will not be affected.

The Commission will exercise jurisdiction over the abandonment component of a relocation project, and require separate approval or exemption, only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. See D.T.& I.R.—Trackage Rights, 363 I.C.C. 878 (1981). Under these standards, the embraced incidental trackage rights component requires no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on INRD's counsel: John H. Doeringer, 20180 Governors Highway, Olympia Fields, IL 60461.

Decided: July 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17782 Filed 7–20–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32539]

Waccamaw Coast Line Railroad Co., Inc., Clinton Division—Lease and Operation Exemption—Line of Clinton Industrial Switching District, Inc.

Waccamaw Coast Line Railroad Co., Inc., Clinton Division (WCLC), has filed a notice of exemption to lease and operate 3.5 miles of railroad owned by the Clinton Industrial Switching District, Inc. (CISD),[1] extending from milepost 199.0 at Moltonville, NC (where it connects with CSXT), to milepost 202.5 at Clinton, NC.

The transaction was expected to be consummated on or after July 1, 1994. Any comments must be filed with the Commission and served on: Peter A. Greene, 1920 N Street, N.W., Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d)

[1] CISD is a noncarrier that acquired the line on February 10, 1994 from Sampson Salvage Co. (Sampson), a noncarrier. Sampson purchased the line from CSX Transportation, Inc. (CSXT) on December 16, 1993, after it was abandoned by CSXT pursuant to an exemption granted in CSX Transportation, Inc.—Abandonment Exemption—In Sampson County, NC, Docket No. AB–55 (Sub-No. 456X) (ICC served June 8, 1993).

may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17783 Filed 7–20–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with section 122(d) of CERCLA, 42 U.S.C. 9622(d), and Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent degree in *United States et al.* v. *CDMG Realty Co. et al.*, Civil Action Nos. 89–4246 and 89–4281, was lodged on July 5th, 1994 with the United States District Court for the District of New Jersey. Under the terms of the proposed decree, thirty-two settling defendants will be required to undertake the remedial design and remedial action at the Sharkey Landfill Superfund Site in Morris County, New Jersey. Twelve additional *de minimis* settling defendants will be allowed to settle under section 122(g) of CERCLA, and they, together with the settling defendants, will reimburse the United States and State of New Jersey $2,050,000 of the total $2,970,000 incurred by the United States and State of New Jersey at the Site. The settling defendants will also be required to reimburse the United States up to $250,000 of the total $1.5 million which the United States is expected to incur in the future in overseeing the implementation of the remedial design and remedial action at 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 for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States et al.* v. *CDMG Realty Co. et al.*, D.J. reference #90–11–2–470.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of New Jersey, 90 Broad Street, Newark, New Jersey; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree and appendices may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC. In requesting a copy with appendices, please enclose a check in the amount of $70.75 or, if you wish a copy without appendices, please enclose a check in the amount of $35.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Section, Environment and Natural Resources Division.

[FR Doc. 94–17719 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environment Response, Compensation, and Liability Act

Notice is hereby given that a proposed Stipulation and Order of Settlement and Dismissal ("Stipulation") in *Manville Corp.* v. *United States*, Civil Action No. 91 Civ. 6683 (RWS), was lodged on June 24, 1994 with the United States District Court for the Southern District of New York. Under the Stipulation, Manville Corp. ("Manville") agrees to make cash payments totalling $1,670,869 to resolve its liability, and those of certain related corporations, for response costs and, as to certain of the sites, natural resource damages, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C., § 9601 et. seq., at the following sites: the Commercial Oil Site in Oregon, Ohio; the Compass Industries Site in Tulsa, Oklahoma; the Great Lakes Asphalt Site in Zionsville, Indiana; the Lowry Landfill Site in Arapahoe County, Colorado; the Operating Industries Site in Monterey Park, California; the Petrochem/Ecotek Site in Salt Lake City, Utah; the Seymour Recycling Site in Seymour, Indiana; the Yellow Water Road Site in Baldwin, Florida; the Coalinga Site in Fresno County, California; the Union Chemical Site in South Hope, Maine; the Roebling Steel Site in Florence Township, New Jersey; and the Ellis Road Site in Jacksonville, Florida.

The Stipulation also provides that, notwithstanding the discharge that Manville and related corporations received as a result of the confirmation of plans of reorganization on December 22, 1986 in Chapter 11 bankruptcy proceedings, Manville will agree to make certain payments, calculated pursuant to provisions and procedures set forth in the Stipulation, to resolve any liabilities it may have under CERCLA with respect to sites not owned or operated by Manville subsequent to confirmation of the plans of reorganization, arising from certain activities that Manville engaged in prior to the confirmation of the plans of reorganization. In exchange, the United States agrees not to pursue Manville with respect to such liabilities, except pursuant to the procedures set forth in the Stipulation. With respect to sites owned or operated by Manville subsequent to the confirmation of the plans of reorganization, the Stipulation provides that any CERCLA liability of Manville will be unaffected by the Chapter 11 bankruptcy proceedings.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation and Order of Settlement and Dismissal. 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 *Manville Corp.* v. *United States*, 91 Civ. 6683 (RWS), DOJ Ref. No. 90–11–3–90D.

The proposed Stipulation and Order of Settlement and Dismissal may be examined at the office of the United States Attorney, for the Southern District of New York, 100 Church Street, New York, New York 10007; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Stipulation and Order of Settlement and Dismissal 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 $13.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17720 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby

given that a proposed consent decree in *United States* v. *Commonwealth of Pennsylvania*, Civil Action No. 94–1154, was lodged on July 7, 1994, with the United States District Court for the Western District of Pennsylvania. The consent decree addresses violations of Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and of Pennsylvania's State Implementation Plan ("SIP"), which occurred at the Western Center state mental health facility in Canonsburg, Pennsylvania. Specifically, Western Center violated mass emissions and visible emissions standards set forth in the SIP. The violations resulted from the operation of boilers used for heating the facility.

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. *Commonwealth of Pennsylvania*, DOJ Ref. # 90–5–2–1–1836.

The proposed consent decree may be examined at the office of the United States Attorney, 7th and Grant Streets, Pittsburgh, Pennsylvania 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 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, N.W., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17721 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *City of Port St. Joe, Florida, et al.*, Civil Action No. 92–50227–LAC, was lodged on July 8, 1994, with the United States District Court for the Northern District of Florida. The Complaint in this civil action alleged that the City of Port St. Joe, Florida, violated effluent limits and other terms and conditions of its NPDES permit for its municipal wastewater treatment plant. The Complaint also alleged that the St. Joe Forest Products Company committed violations of the pass through and interference regulations promulgated under the Clean Water Act by excessive discharges of pollutants and contaminants from its paper mill to the City's wastewater treatment plant. Under the proposed Consent Decree, the Company will pay a civil penalty of $325,000 in settlement of the United States' claims, and the City will pay a civil penalty of $25,000.

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, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Port St. Joe, Florida, et al.*, DOJ. Ref. 90–5–1–1–3026.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Florida, 114 East Gregory Street, Pensacola, Florida; the Region 4 Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; 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 $3.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17722 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Southwest Louisiana Hospital Association, Inc.*, Civil Action No. CV 92–1876–LC, was lodged on *July 11, 1994* with the United States District Court for the Western District of Louisiana.

This case arises from alleged violations by Defendants, Southwest Louisiana Hospital Assoc., Inc. and F. Miller & Sons, Inc., of the Clean Air Act and Asbestos National Emission Standards for Hazardous Air Pollutants ("NESHAP") at the Lake Charles Memorial Hospital in Lake Charles, Louisiana from September 1988–January, 1989. The Decree provides that Defendants shall pay a civil penalty of $81,500, comply with the Asbestos NESHAP, and provide notices about asbestos containing materials at their renovation/demolition projects. Defendant Miller also agreed to provide in-house training to all employees who are responsible for demolition/renovation activities.

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. *Southwest Louisiana Hospital Association, Inc.*, DOJ Ref. #90–5–2–1–1600.

The proposed consent decree may be examined at the office of the United States Attorney, 600 Jefferson Street, Suite 1000, Lafayette, LA 70501–7206; the Region VI, Office of the Environmental Protection Agency, 1445 Ross Ave., Dallas, Texas 75202; 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 $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 94–17723 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

In accordance with Departmental policy, notice is hereby given that a proposed settlement agreement and stipulated order with Lone Star Industries, Inc. ("Lone Star") in *In re New York Trap Rock Corporation, Lone*

Star Industries, Inc., et al., Debtors, and In re Lone Star Industries, Inc., Debtor, Chapter 11, Case Nos. 90 B21276 (HS) to 90 B21286(HS), 90 B21334(HS) and 90 B21335(HS) (Jointly Administered) and Case No. 90 B21277(HS), was lodged on July 11, 1994, with the United States Bankruptcy Court for the Southern District of New York. This proposed settlement agreement and stipulated order is a settlement of claims filed by the United States on behalf of the Environmental Protection Agency in the above proceeding pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, for past and future response costs at the Portland Cement Co. (Kiln Dust, #2 & #3) Superfund Site in Salt Lake County, Utah, Kiln Dust sites 1 and 4, also located in Salt Lake County, Utah, and site 5 located in Davis County, Utah (collectively, the "Sites"). The Sites were utilized for the deposit of cement kiln dust, a by-product of cement manufacturing, during the period from 1965 through 1983.

The proposed settlement agreement and stipulated order provides that the United States, on behalf of the Environmental Protection Agency shall be allowed a Class 4 general unsecured claim against Lone Star in the amount of $16,292,490. In addition, the Department of Interior, a natural resource trustee, shall be allowed a class 4 general unsecured claim in the amount of $200,000.

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 *In re New York Trap Rock Corporation, Lone Star Industries, Inc., et al., Debtors, and In re Lone Star Industries, Inc., Debtor,* DOJ Ref. #90–11–2–602A.

The proposed settlement agreement and stipulated order may be examined at the Office of the United States Attorney for the District of Utah, room 476, U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah 84101; the Region VIII Office of the Environmental Protection Agency, 999 185h Street, suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed settlement agreement and stipulated order 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 the amount of $8.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17751 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Modification Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, notice is hereby given that a proposed Modification to Consent Decree with an Intervening Plaintiff and the Defendants in *United States* v. *Raymark Industries, Inc., et al.*, C.A. No. 85–3073 (E.D. Pa.), was lodged on June 29, 1994, with the United States District Court for the Eastern District of Pennsylvania. This proposed Modification to Consent Decree conforms the remedy for certain groundwater contamination affecting municipal drinking water wells in Hatboro Borough, Pennsylvania to the remedy chosen by the United States Environmental Protection Agency ("EPA") in its Record of Decision ("ROD") to abate groundwater contamination at and under a Site located at Jacksonville Road, Hatboro Borough commonly referred to as the "Raymark Site." The original Consent Decree was entered prior to EPA's publication of the ROD and required the Hatboro Borough Municipal Authority (which had been compensated under the Decree by Defendants' payments of $612,500) to perform pumping and treating of water at a location different than that later set forth in the ROD. Under the proposed Modification to Decree, Hatboro will remain responsible for performing work which ultimately will exhaust the $612,500 it received under the Decree, as well as interest earned on those funds. EPA will perform all other remedial measures, using Superfund money.

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 Modification. 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. *Raymark Industries, Inc., et al.*, DOJ Ref. #90–11–2–12.

The proposed Modification to Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, 12th Floor, suite 1200, Philadelphia Life Building, Philadelphia, Pennsylvania 19107; the Region III Office of the Environmental Protection Agency, 801 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202–347–2072. A copy of the proposed Modification to Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy of the proposed Modification and accompanying Amended Work Plan (Appendix A to the Modification), please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. Please enclose an additional $19.25 should you wish to order a copy of the ROD (Appendix B).

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

FR Doc. 94–17752 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 8, 1994, proposed consent decrees in *United States* v. *Shaffer Equipment Company, et al.*, Civ. A. No. 92–2024, were lodged with the United States District Court for the Southern District of West Virginia.

The complaint filed by the United States seeks to recover response costs under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, incurred by the United States in connection with response actions taken at the Shaffer Equipment Superfund Site ("Site") located in Mindon, West Virginia. The proposed decree with Anna Shaffer and Shaffer Equipment Company resolves the claims of the United States against those defendants for response costs incurred at the site up to December 22, 1993 for a payment by those defendants of $600,000 to the United States. The consent decree with Berwind Land Company resolves claims against Berwind Land Company for past

and future response costs incurred and to be incurred at the site for a payment by Berwind Land Company of $75,000 to the United States. Shaffer Equipment Company and Berwind Land Company agree in the consent decrees to provide access to the United States to their property at the site for any future response actions. The consent decree with Johns Hopkins University resolves claims against Johns Hopkins University for past and future response costs incurred and to be incurred at the Site for a payment by Johns Hopkins University of $50,000 to the United States.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Shaffer Equipment Company, et al.*, DOJ Reference No. 90–11–2–649.

The proposed consent decrees may be examined: at the Office of the United States Attorney for the Southern District of West Virginia, U.S. Courthouse, 500 Quarrier Street, Charleston, West Virginia; at the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pa.; and at the Consent Decree Library, 1120 "G" Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed decrees may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $6.25 for the Anna Shaffer and Shaffer Equipment Company consent decree, $6.25 for the Berwind Land Company consent decree, and $5.00 for the Johns Hopkins University consent decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17753 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Bell Communications Research, Inc.

Notice is hereby given that, on May 25, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and GTE Service Corporation ("GTE") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plantiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and GTE, Irving, TX. Bellcore and GTE entered into an agreement effective as of March 1, 1994, under GTE will participate in various Bellcore projects which Bellcore is currently undertaking for its owner companies, all directed to understanding telecommunications network architecture, concepts and/or service capabilities in support of exchange and exchange access telecommunications services. Those projects may comprise such activities as the creation, development or production of new telecommunications network service concepts and related network planning, engineering and software development and production and will include, for example, exploration of innovative billing systems for involving network services.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–17754 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Network Management Forum

Notice is hereby given that, on June 6, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Unisys Corporation, Amsterdam, The Netherlands is a Corporate Member. Advantis, White Plans, NY; Crosskeys Systems Corporation, Kanata, Ontario, Canada; Data General Corporation, Westboro, MA; EID-Empresa de Investigacao Desenvolvimento, Monte da Caprica, Portugal; ITEC–TELECOM, Santafe de Bogota, Columbia; Kingston Communications PLC, Beverley, Yorkshire, England; KTAS, Copenhagen, Denmark; Norwegian Telecom, Oslo, Norway; NTT Mobile Communications Network, Inc., Tokyo, Japan; Pontis Consulting, Reading, Berkshire, England; and Tellabs Operations, Inc., Lisle, IL are Associate Members. Argos Distributors Ltd., Avebury, England; CCTA, Norwich, Norfolk, England; Data Communications, Maidenhead, Berkshire, England; Gartner Group, Stamford, CT; ITT Hartford, Hartford, CT; KPMG Peat Marwich, Watford, Herts, England; and Versant Object Technologies, Menlo Park, CA are Affiliate Members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on September 15, 1993. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on November 10, 1993 (58 FR 59736).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–17755 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

National Stolen Auto Part Information System (NSAPIS) Federal Advisory Committee; Meeting

The NSAPIS Federal Advisory Committee will meet on August 16–17.

1994, from 9 a.m. until 5 p.m., at the Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, Virginia, telephone 703–528–6000, to discuss the design and implementation of the system mandated by Public Law 102–519.

The Committee will address issues concerning the final recommendations of the Committee, the NSAPIS Pilot Program, the establishment of an Oversight Committee and the requirements for the NSAPIS System Administrator.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning NSAPIS or related matters with the Committee, before or after the meeting, by sending same to the Chairman/Designated Federal Officer. Anyone wishing to address this session of the meeting should notify the Designated Federal Officer at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; a short statement describing the topic to be addressed; and the time needed for presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specially approved by the Chairman.

Inquires may be addressed to the Chairman/Designated Federal Officer, Mr. Virgil L. Young, Jr., Chief, Programs Development Section, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC, 20535 telephone (202) 324–5084.

Dated: July 13, 1994.

Virgil L. Young, Jr.,

Chief, Programs Development Section, Designated Federal Officer.

[FR Doc. 94–17756 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–20–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–046]

Intent To Grant Coexclusive Patent Licenses

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant patent licenses.

SUMMARY: NASA hereby gives notice of intent to grant Zeoponics, Inc., of Austin, Texas, and Zeoponix, Inc., of Boulder, Colorado, royalty-bearing, revocable, coexclusive licenses to practice the inventions described and claimed in U.S. Patent Application Serial No. 08/243,335 entitled "Slow Release Fertilizer" and U.S. Patent Application Serial No. 08/243,336 entitled "Active Synthetic Soil." The proposed patent licenses will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the licenses, unless within 60 days of the Date of this Notice, NASA receives written objections to the grant, together with any supporting documentation. All written objections to the grant will be reviewed and then a final decision whether to grant the licenses will be made.

DATES: Comments to this notice must be received by September 19, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Lupuloff, (202) 358–2041.

Dated: July 13, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–17773 Filed 7–20–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before September 6, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Agricultural Marketing Service (N1–136–94–1). Administrative records and

raw data from the Pesticide Data Program.

2. Department of Agriculture, Food Safety and Inspection Service N1–462–94–1). Meat and poultry establishment records.

3. Department of Health and Human Service, Agency for Health Care Policy Research (N1–510–94–3). Administrative records relating to the development of Clinical Practice Guidelines and Technical Reports.

4. Department of Justice, Office of Justice Programs (N1–423–92–1). Denial of Federal Benefits Clearinghouse Systems.

5. Department of Justice, Immigration and Naturalization Service (N1–85–93–2). Crewman's Landing Permit forms.

6. Department of State (N1–59–93–17). Routine, facilitative, and duplicative records of the Moscow Embassy Building Control Office.

7. Department of State (N1–59–93–43 and N1–59–93–44). Duplicative records from the Bureau of European Affairs.

8. Bureau of Mines, Division of Budget (N1–70–94–2). Reduction in retention period for budget records.

9. Farm Credit Administration (N1–103–93–2). Data generated by the consolidated reporting, early warning, and projection systems on institutions belonging to the Farm Credit System.

10. Federal Deposit Insurance Corporation, Division of Supervision (N1–34–94–2). Savings and loan association supervisory files.

11. National Security Agency (N1–457–94–3). Personnel security files.

12. Small Business Administration, Office of Administrative Services (N1–309–90–3). The Liquidation/litigation tracking system, prime contractors regional information system, and the procurement career management program data system.

Dated: June 27, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–17724 Filed 7–20–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: August 3, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Fellowships for University Teachers applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
2. Date: August 3, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
3. Date: August 4, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Fellowships for University Teachers applications in American History and Studies II; Communication and Media; and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
4. Date: August 4, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
5. Date: August 5, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in Rhetoric, Communication, Media, Folklore, and American Studies, submitted to the Division of Fellowships and Seminars, for projects after June 1, 1995.
6. Date: August 8, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Fellowships for University Teachers applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
7. Date: August 8, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
8. Date: August 9, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
9. Date: August 10, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This combined Fellowships for University Teachers and Fellowships for College Teachers meeting will review applications in African, Asian, and Latin American History and Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
10. Date: August 11, 1994
    Time: 8:00 a.m. to 5:30 p.m.
    Room: 415

Program: This meeting will review Fellowships for College Teachers applications in Political Science and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

11. Date: August 12, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

12. Date: August 15, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Romance Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

13. Date: August 16, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Political Science, Law, and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

14. Date: August 16, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

15. Date: August 18, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

16. Date: August 18, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers applications in Classical, and Medieval Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

17. Date: August 19, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

David Fisher,
Advisory Committee Management Officer.
[FR Doc. 94–17691 Filed 7–20–94; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Workshop

The National Science Foundation (NSF) will hold a one day workshop on August 1, 1994. The Workshop will take place at the Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Sessions will be held from 11 a.m. to 3:30 p.m.

The goal of the Workshop is to provide a forum for gathering the views of leaders in the higher education community on the present condition of undergraduate education in science, mathematics, engineering and technology, and obtain advice about how to improve it.

The Workshop will not operate as an advisory committee. It will be open to the public. Participants will include approximately 15 leaders in science, mathematics and engineering education.

For additional information, contact Dr. Robert Watson, Director, Division of Undergraduate Education, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1666.

Dated: July 15, 1994.

Dr. Robert F. Watson,
Division Director, Undergraduate Education.
[FR Doc. 94–17727 Filed 7–20–94; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Adequacy and Compatibility for NRC and Agreement State Radiation Control Programs Necessary to Protect Public Health and Safety; Draft Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft statement of policy.

SUMMARY: The Nuclear Regulatory Commission is revising its general statement of policy regarding the review of Agreement State radiation control programs. This action is necessary to clarify the meaning and use of the terms "adequate" and "compatible" as applied to an Agreement State radiation control program. This draft policy statement would not be intended to have the force and effect of law or binding effect; it is intended as guidance to the Agreement States, NRC staff, and the public to make clear how the Commission intends to evaluate the adequacy and compatibility of NRC and Agreement State programs. Comments are solicited on the draft policy statement and specific questions contained in this notice.

DATES: Comments are due on or before October 19, 1994.

ADDRESSES: Send written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Cardelia Maupin, State Agreements Program, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2312.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The terms "compatible" and "adequate" constitute core concepts in the Commission's Agreement State program under Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, in 1959. Subsection 274d. states that the Commission shall enter into an Agreement under subsection b., discontinuing NRC's regulatory authority over certain materials in a

State, if the State's program is both adequate to protect public health and safety and compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the Commission to cooperate with the States in the formulation of standards to assure that State and Commission standards will be coordinated and "compatible." Subsection 274(j)(1) requires the Commission to periodically review the Agreements and actions taken by the States under the Agreements to ensure compliance with the provisions of section 274. Although the terms "compatible" and "adequate" are fundamental requirements in the Agreement State program under Section 274 of the AEA, these terms are not defined in the Act. Neither has the Commission provided a formal definition or formal comprehensive guidance on how the terms should be interpreted in implementing Section 274. The guiding concept over the years since the beginning of the Agreement State program in the area of compatibility has been to encourage uniformity to the maximum extent practicable while allowing flexibility, where possible, to accommodate local regulatory concerns. This concept has been implemented in case-by-case decisions by the Commission and in internal procedures developed by the staff to assign designations of degrees of "compatibility" (i.e. uniformity), from "essentially verbatim" to "no degree of uniformity required," to sections of the Commission's regulations. More recently, the Commission has attempted to involve the States earlier in the process of developing new regulations and determining what level of "compatibility" (i.e. uniformity) will be required of the Agreement States.

The Commission's approach to making compatibility determinations has evolved slowly over the life of the Agreement State program. At the same time, since 1962, the Agreement State program has expanded and developed significantly both in the number of Agreement States, as well as depth of experience and expertise of State regulators. To clarify the matter of compatibility, the Commission has directed the staff to develop a comprehensive interpretation and application of compatibility.

On April 2, 1993, the Commission directed the staff to develop a compatibility policy for all program areas other than low level radioactive waste. While developing the policy, the staff participated in discussions with the Agreement States, the non-Agreement States, the regulated community, and the general public. A working group was formed and a draft issues paper was developed. The draft issues paper was discussed with the Agreement States in a public meeting in May 1993 and draft options, SECY–93–290, were discussed in October 1993 at the All Agreement States Meeting. The Agreement and non-Agreement States, the regulated community and the general public participated in a public workshop on the final issues paper in July 1993.

Results of Discussions With Various Groups

A. States

The States would like to see a minimum number of requirements for compatibility determinations. From the comments at the July 1993 public workshop and during the October 1993 All Agreement States Meeting in Tempe, Arizona, the following positions, though not a formal consensus, emerged:

The States are in favor of:

1. uniformity of requirements that are necessary to assure interstate commerce, i.e., labels, signs and symbols.
2. uniformity of radiation standards necessary to protect public health and safety. However, States want the flexibility to set stricter dose limits when local conditions warrant them.
3. early and substantive involvement in the deliberations on the development of regulations.

B. Regulated Community

The regulated community desires strict adherence to uniform national radiation standards so that licensees meet the same standards in all States and will not be subject to different regulations in different States.

C. Environmental Group

An environmental advocacy group indicated that Federal and State regulations should be the minimum requirements with the proviso that communities may have the flexibility to go beyond those regulations.

In the formulation of this draft policy statement, the staff has carefully considered the views of the Agreement States, the regulated community, the environmental group and other members of the public.

II. Discussion

The question posed by the current task to develop a compatibility policy centers on making a determination of what components or elements of a State radiation control program are needed beyond those which establish and maintain an adequate radiation control program. Presently, adequacy of Agreement State programs is only applied to program elements in terms of their direct or indirect bearing on public health and safety and compatibility is only applied to the degree of conformity between State regulations and NRC's regulations. However, staff believes that some regulations should be a matter of adequacy to protect public health and safety and some program elements should be a matter of compatibility. In order to fully understand this concept, the relationship between adequacy and compatibility must be examined.

Section 274 of the Atomic Energy Act requires that Agreement State programs be both "adequate to protect the public health and safety" and "compatible with the Commission's program." Thus, under the proposed compatibility policy, these separate findings must be based on consideration of two different objectives; first, providing for an acceptable level of protection for public health and safety in an Agreement State (the "adequacy" component), and second, providing for the overall national interest in radiation protection, (the "compatibility" component). An "adequate" program, including regulations or other legally binding measures (e.g., license conditions) and program elements (e.g., organization and resources) should consist of those attributes considered necessary by the Commission to maintain an acceptable level of protection of the public health and safety within the Agreement State. A "compatible" program, including radiation protection standards and other program elements, should consist of those attributes considered necessary by the Commission to meet a larger national interest in radiation protection. The requirements for adequacy would focus on the protection of public health and safety within a particular State, whereas the requirements for compatibility would focus on the extraterritorial effect of State action or inaction either on other States or on the national program for radiation protection. As a basis for determining what ultimately will be required for compatibility, the Commission must first identify what is necessary for a State program to be "adequate."

A. Adequate

Under the draft policy, "adequate" would focus on those elements of a State program that are necessary to provide a level of protection of the public health and safety within the State that is equivalent to, or greater than, that provided by the NRC regulatory program for its licensees. The requirements for "adequate" would not require that NRC regulations or other

program elements be incorporated in an essentially identical manner. Under the adequate provision, States would also be allowed to establish requirements through measures other than regulations, such as license conditions.

B. Compatibility

The "compatibility" requirement would focus on those elements of a State program which would be required to be essentially identical with the NRC regulatory framework in order to achieve a larger national interest beyond that required for adequate protection of the public health and safety within the State. The draft policy establishes four criteria [1] that the NRC would use to determine which elements of the NRC regulatory program, including specific NRC regulations, that the State would be required to incorporate in an essentially identical manner into its regulatory program. The dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto, or other NRC regulations which are required to be essentially identical for compatibility purposes will automatically be required to be identical.[2] States will not have the flexibility to deviate from the program elements that the Commission requires for compatibility.

C. Compatibility and Adequacy Determination of Agreement States

The staff has developed a management directive for the use of common performance indicators in review of the Agreement States and regional materials program. The development of the common performance indicators for the evaluation of Agreement States and the NRC regional offices will be directly related to adequacy requirements for Agreement State programs, and consequently, will need to be closely coordinated with the staff efforts to define the elements of an adequate State program. In January 1994, the staff provided to the Commission a paper further describing the use of common performance indicators in NRC region and Agreement State reviews. The staff is currently implementing a pilot program on the common performance indicators program. The current proposed common performance indicators program contemplates using a Management Review Board (MRB) to make the decision on the adequacy of existing Agreement State programs. The initial adequacy determination of a proposed new Agreement State program will be made by the Office of State Programs, rather than the MRB, because the adequacy of a proposed new program is not dependent on effectiveness of actual program implementation. The staff plans to follow this same split of responsibilities for the compatibility determination of an Agreement State program, with the MRB making the compatibility determinations for existing Agreement State programs, and the Office of State Programs making the initial compatibility determinations for proposed new programs. The initial adequacy and compatibility determinations for proposed new Agreement State programs are reviewed and approved by the Commission. Indicators of compatibility will also be developed by the staff.

D. Termination of Agreements

Termination of an Agreement can occur when an Agreement State program is either inadequate or incompatible. The proposed MRB, reviewing discrete common performance indicators, would judge the overall adequacy of an Agreement State program. Similarly, the MRB would review discrete "compatibility indicators" and determine the overall compatibility of an Agreement State program. For either of the adequacy or compatibility determination, failure to satisfy an individual indicator may not necessarily result in an overall finding of inadequacy or incompatibility. In some situations, individual indicator weakness(es) could result in a "marginal" finding by the MRB calling for Agreement State improvements and the State program may be placed on probation. In extreme cases, indicator(s) failure could lead to inadequate or incompatible findings resulting in the initiation of program suspension or termination. In terms of the compatibility evaluation, the significance of performance indicator "incompatibility" in an individual State will be judged on the basis of the impact on the national program.

E. Specific Questions for Public Comment

In responding to this notice, the following questions should be specifically addressed along with any additional comments.

1. Under what circumstances should Agreement States be permitted to establish more stringent requirements, for their licensees, than those established by the Commission? Should this also include the ability to establish stricter dose limits for particular classes of licensees?

2. Are the four criteria in the proposed policy statement for determining whether a Commission regulation or other program element should be adopted in a manner essentially identical by the Agreement States sufficient to ensure protection of the national interest in radiation protection? What examples could be used to illustrate how each criterion would be applied?

3. What are some examples of State action to establish stricter requirements than those established by the Commission, or establish requirements where the NRC has not?

4. What limits, if any, should be placed on the power of a State to preclude or, by exceptionally stringent regulations, effectively preclude a particular practice?

5. Are there any other dose or radiation-protection related release limits in the Commission's regulations which should be included under the criterion number 3 of the compatibility criteria? Should the dose limits contained in 10 CFR Part 61 be included under this criterion?

6. Should the draft adequacy and compatibility policy statement be applicable to the regulation of low-level waste disposal instead of continuing to consider questions of compatibility in this area on a case-by-case basis?

7. Are there currently areas or situations in Agreement State regulations or other Agreement State requirements that would not meet the proposed policy statement?

8. Should States be permitted to establish more stringent standards for radiation-protection related release limits?

III. Policy Statement

The purpose of this Policy Statement is to provide a comprehensive interpretation and application of the terms "adequate" and "compatible" as they apply to the NRC Agreement State regulatory programs.

The terms "compatible" and "adequate" constitute core concepts in

[1] The compatibility criteria are specified in Section III.D, below.

[2] In issuing this Draft Policy Statement for comment, the Commission is revisiting its earlier decision to review compatibility of Agreement State programs in the low level radioactive waste area on a case-by-case basis. The Commission based its earlier decision on a belief that such case-by-case consideration could best address the special circumstances that confront Agreement States in that area. Using the case-by-case approach, the Commission has determined that the low level radioactive waste regulations of Pennsylvania and Illinois are compatible.

the Commission's Agreement State program under Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, in 1959. Subsection 274d. states that the Commission shall enter into an Agreement under subsection b., discontinuing NRC's regulatory authority over certain materials in a State, if the State's program is both adequate to protect public health and safety and compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the Commission to cooperate with the States in the formulation of standards to assure that State and Commission standards will be coordinated and "compatible." Subsection 274j(1) requires the Commission to periodically review the Agreements and actions taken by the States under the Agreements to insure compliance with the provisions of section 274.

A. Definitions

For the purpose of evaluating the adequacy of Agreement State regulatory programs to protect public health and safety, the following terms are defined:

1. Adequate

The acceptable level of protection for the public health and safety from the radiation hazards associated with the use of byproduct, source, and special nuclear materials.

2. An Adequate Agreement State Program

An effectively implemented regulatory program containing elements considered necessary by the Commission to provide an acceptable level of protection for the public health and safety from the radiation hazards associated with the use of byproduct, source, and special nuclear materials.

3. Compatible

The consistency between NRC and Agreement State regulatory programs which is needed for the regulation of byproduct, source and special nuclear material which assures an orderly and effective regulatory pattern in the administration of the national radiation protection program. Compatibility shall be aimed at ensuring that interstate commerce is not impeded, that effective communication in the radiation protection field is maintained, that dose limits and radiation-protection related release limits applicable to all licensees are maintained, and that information needed for the study of trends in radiation protection and other national program needs is obtained.

4. A Compatible Agreement State Program

A regulatory program containing elements considered necessary by the Commission to effectively implement the term "compatible" as defined above.

5. Element

"Element" or "program element" is used to describe any of the essential components and functions of a radiation protection regulatory program. The term includes any aspect of a radiation protection regulatory program that is necessary to implement a program that is adequate to protect public health and safety and is compatible with the NRC regulatory program. The term "element" may include organizational structure, staffing level, inspection frequency, regulations, policies and procedures or any other component or function that the Commission considers necessary.

6. Practice

The term "practice" describes a use, procedure or activity associated with the application, possession, storage or disposal of byproduct, source and special nuclear materials. The term "practice" is very broad and encompassing in nature. For example, the term "practice," as applied in the policy statement, not only applies to very general activities involving radioactive materials such as industrial radiography, low-level waste disposal, nuclear medicine procedures, and well logging, but also includes specific activities conducted within these very broad activities, such as shallow land burial, sanitary sewerage disposal, and incineration of materials.

7. Radiation Protection Standards

As used in this Policy Statement, the term "radiation protection standards" means dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto.

B. Elements of an Adequate Program

1. Protection

The Agreement State program shall be designed and administered to protect the public health and safety of its citizens against radiation hazards.

2. Regulations

Except for dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto, or other regulations which are required to be essentially identical for compatibility purposes, an Agreement State program shall adopt regulations or other legally binding measures, equivalent to, or more stringent than, those designated by the NRC.

3. Inspection

The State regulatory program shall provide for the inspection of the possession and use of radioactive materials by the regulatory authority. The State inspection of licensee facilities, equipment, procedures and use of materials shall provide reasonable assurance that the public health and safety is being protected. Inspection and testing shall be conducted to assist in determining compliance with regulatory requirements. Frequency of inspection shall be related directly to the hazards associated with amount and kind of material and type of operation licensed. The minimum inspection frequency, including initial inspections, shall be no less than the NRC inspection frequency. An adequate inspection program includes: preparation and use of procedures and policy memoranda to assure technical quality in the inspection program and review of inspection actions by senior staff or supervisors. The inspection staff technical expertise should be similar to NRC staff qualifications.

4. Enforcement Program

Licensee noncompliance with requirements necessary for the safe possession and use of radioactive materials shall be subject to enforcement through legal sanctions, and the regulatory authority shall be authorized by law with the necessary powers for prompt enforcement.

5. Staffing and Personnel Qualifications

The regulatory agency shall be sufficiently staffed with an adequate number of qualified personnel to implement the radiation control program effectively. Agreement State staff shall be qualified using criteria no less stringent than criteria used for NRC staff.

6. Administrative Procedures

State practices for assuring the effective administration of the radiation control program, including provisions for public participation where appropriate, shall be incorporated in procedures for:

(a) Formulation of rules of general applicability;

(b) Approving or denying applications for licenses authorizing the possession and use of radioactive materials; and

(c) Taking enforcement actions.

7. Statutes

State statutes and/or duly promulgated regulations shall be established to authorize the State to carry out the requirements under Section 274b of the Atomic Energy Act, as amended and any other statutes as appropriate, such as Public Law 95–604, Uranium Mill Tailings Radiation Control Act (UMTRCA).

8. Laboratory Support

The State shall have available calibrated field and laboratory instrumentation sufficient to independently determine the licensee's control of materials, to validate the licensee's measurements, and to respond to events involving radioactive material.

9. Licensing

The State regulatory program review of license applications for the purpose of evaluating the applicant's qualifications, facilities, equipment, procedures and use of materials shall provide reasonable assurance that the public health and safety are being protected. An adequate licensing program includes: preparation and use of licensing guides and policy memoranda to assure technical quality in the licensing program and review of licensing actions by senior staff or supervisors. In addition, procedures involving the licensing of products containing radioactive material intended for interstate commerce should require a high degree of uniformity with those of the NRC. The review staff technical expertise should be similar to NRC staff qualifications.

10. Investigation (Response to Events)

The State regulatory program shall provide for timely and effective investigation of incidents, reportable events, allegations and any potential wrongdoing.

11. Budget

The State radiation control program (RCP) shall have adequate budgetary support to implement an effective program. The total RCP budget must provide adequate funds for salaries, training, travel costs associated with the compliance program, laboratory and survey instrumentation and other equipment, contract services, and other administrative costs.

C. Elements of a Compatible Program

1. Radiation Labels, Signs, and Symbols

States must have radiation labels, signs and symbols identical to that of the national standard.

2. Uniform Manifest

State regulatory programs shall establish a manifest system in accordance with 10 CFR Part 20.

3. Transportation Regulations

State regulations regarding transportation of radioactive materials must be identical or essentially verbatim with those in 10 CFR Part 71.

4. Event Reporting

The State regulatory program shall require licensee reporting in a manner so that information on identical type events is consistent with the reporting established by the NRC. This information shall be provided to the NRC.

5. Reciprocity

The State regulatory program shall have reciprocal recognition of out-of-State licensees and Federal licensees through a process which authorizes the safe conduct of similar operations within the Agreement State.

6. Records and Reports

The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys and disposal of materials, (b) keep records of the receipt and transfer of the material, (c) maintain reports of significant incidents involving radioactive materials.

7. Radiation Protection Terminology

The State regulatory program shall adopt fundamental radiation protection terminology in a manner essentially identical to NRC definition of these terms to ensure clear communication about radiation protection. Some examples of these terms are "byproduct material;" "total effective dose equivalent;" "sievert;" "gray;" and "becquerel."

8. Radiation Protection Standards

The State regulatory program shall adopt dose limits and radiation-protection related release limits in 10 CFR Part 20, and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto.

D. Compatibility Criteria

The following criteria shall be applied to program elements and regulations to determine whether they must be adopted by Agreement States in a manner essentially identical to that of the NRC for the purposes of compatibility:

1. avoids a significant burden on interstate commerce;

2. ensures clear communication on fundamental radiation protection terminology;

3. ensures the establishment of the dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto;

4. assists the Commission in evaluating the effectiveness of the overall national program for radiation protection.

If none of the above criteria is met, the State would have the flexibility to design its own program including incorporating more stringent [3] requirements provided that:

a. the requirements for adequacy are still met; and

b. the more stringent requirements do not preclude or effectively preclude a practice within the national interest without an adequate public health and safety or environmental basis.

E. Implementation

Notwithstanding the provisions above, the Agreement States shall exercise their regulatory authority in a responsible manner and shall not adopt more stringent regulations or requirements as a means to bar or preclude a practice without an adequate safety or environmental basis, or bar a practice needed in the national interest. In order to permit the NRC to provide early coordination and oversight of any proposed more stringent regulations or requirements, NRC will request Agreement States to identify any such regulations or requirements and provide opportunity for NRC review before publication as a draft rule for comment or before the institution of the requirement as a legally binding measure.

F. Examples [4] for the Compatibility Criteria

1. Avoids a Significant Burden on Interstate Commerce

—The adoption of transportation requirements for all Agreement States should be essentially identical to assure that the flow of radioactive materials in or through another

[3] Local governmental entities are not usually authorized by the NRC under Section 274 to regulate radiological safety. Thus, with limited exception, the authority to set more stringent requirements would not extend to localities unless approved by the Commission through a Section 274 Agreement.

[4] The examples are not part of the Policy Statement and are neither exhaustive nor controlling.

jurisdiction is not impeded. For example, if States were allowed to change 10 CFR 71.47, "External Radiation Standards for all Packages" then it would be very difficult to transport radioactive material packages.

2. Ensures Clear Communication on Fundamental Radiation Protection Terminology

—The definition of the terms "sievert" and "gray" (or "rem," "rad") would need to be adopted essentially identically by all Agreement States.

3. Ensures the Establishment of Dose Limits and Radiation-Protection Related Release Limits in 10 CFR Part 20 and 10 CFR Part 61 Applicable to all Licensees, or Any Subsequent Amendments Thereto

—The basic dose limits and radiation-protection related release limits for all classes of licensees set forth in Subpart C, "Occupational Dose Limits," and Subpart D, "Radiation Dose Limits for Individual Members of the Public," of 10 CFR Part 20 would need to be adopted essentially identical by all Agreement States along with any other subsequent amendments to 10 CFR Part 20 that may set forth dose limits. 10 CFR Part 61.41, "Protection of general population from releases of radioactivity" and 10 CFR Part 61.43, "Protection of individuals during operations" would also need to be adopted essentially identically by all Agreement States.

4. Assists the Commission in Evaluating the Effectiveness of the Overall National Program for Radiation Protection

—The adoption of 10 CFR 35.33, "Notifications, reports, and records of misadministrations" would be adopted by the Agreement States in a manner essentially identical to that of the NRC.

G. Examples[5] of More Stringent Requirements

As noted above, if the State program is equivalent to, or more stringent than, NRC's program to assure the protection of the public health and safety, and it incorporates all the elements of the NRC program identified by the Commission as necessary to achieve the national interest in radiation protection, including the requirement to establish regulations which are uniform with the dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto, then a State should generally have the flexibility to tailor its program. More stringent requirements, other than the above mentioned dose limits and radiation-protection release limits could be applicable to all classes of licensees in a State. For example, an Agreement State's recordkeeping provisions for all licenses could be more stringent than NRC's. Other examples of State actions which impose stricter requirements than NRC regulations, and which would be "adequate" under the draft policy statement, are—

1. State of Florida—20.304

Between 1957 and 1981, several State representatives expressed concern to the Commission over the risk from burials of radioactive waste allowed by 10 CFR 20.304, that was in effect at that time. This regulation, "Standards for Protection Against Radiation; Burial of Small Quantities of Radionuclides" provided that licensees could bury small quantities of radionuclides without prior NRC approval. The State of Florida submitted a request to the NRC to be more stringent by precluding this practice within the State because of its high ground water level. The State's exemption request was reviewed and approved by the NRC.

2. Shallow Land Burial

Several States prohibit the practice of shallow land burial of low-level waste. These more stringent regulations would be allowed under the draft policy statement even though a practice is prohibited. There is no overriding national interest in allowing shallow land burial of low-level waste. A different result would likely be obtained if disposal of low-level waste altogether was prohibited, unless the State was able to convince NRC of special public health and safety or environmental basis for this action.

3. Texas Industrial Radiography Certification

Texas has established a program for the certification of industrial radiography that is more rigorous than Commission requirements. This program requires persons to perform 200 hours of on-the-job training, complete 40 hours of classroom instruction and successfully complete an examination before receiving authorization to conduct radiographic services with radioactive materials. (This example is based on the assumption that the training requirements in 10 CFR 34 do not meet any of the four compatible criteria.)

IV. Paperwork Reduction Act Statement

This draft statement of policy does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (434 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0029.

Dated at Rockville, Maryland, this 15th day of July, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–17728 Filed 7–20–94; 8:45 am]

BILLING CODE 7590–01–P

[5] The examples are not part of the Policy Statement and are neither exhaustive nor controlling.

[Docket Nos. 50–424–OLA–3; 50–425–OLA–3; Re: License Amendment (Transfer to Southern Nuclear) ASLBP No. 96–671–01–OLA–3]

Georgia Power Company, et al. (Vogtle Electric Generating Plant, Units 1 and 2); Notice (Prehearing Conference)

Atomic Safety and Licensing Board; Before Administrative Judges: Peter B. Bloch, Chair, Dr. James H. Carpenter, Thomas D. Murphy.

Pursuant to 10 CFR 2.752, we will hold a public prehearing conference from 10 am until about noon on July 29 at the Hearing Room, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. The purpose of the conference will be to discuss contested motions, if any, and for case management.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair.

[FR Doc. 94–17729 Filed 7–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–02278; License No. 24–00513–32 EA 94–113]

The Curators of the University of Missouri-Columbia, Columbia, Missouri; Confirmatory Order Modifying License (Effective Immediately)

I

The Curators of the University of Missouri-Columbia (Licensee) is the holder of NRC License No. 24–00513–32 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the Licensee to conduct research and development,

instrument calibration, student instruction and medical diagnosis and therapy. The license was issued on April 6, 1962, was most recently amended on May 11, 1994, and is due to expire on July 31, 1998.

II

From January 24 through January 28, 1994, the NRC conducted a safety inspection of licensed activities at the University of Missouri-Columbia. Numerous apparent violations were identified during the inspection. The findings of the inspection were documented in Inspection Report No. 030–02278/94001(DRSS) issued to the Licensee on February 23, 1994.

The NRC is concerned that the circumstances surrounding the numerous violations reflect inadequate control over the safe use of licensed material. The Licensee met with the NRC staff during a management meeting on February 24, 1994, and during an open enforcement conference on February 28, 1994, at the NRC Region III office to review the circumstances that led to the violations. During the enforcement conference, the Licensee proposed various corrective actions that could be taken to prevent recurrence of the violations and to ensure compliance with NRC requirements. The Licensee agreed to submit these proposals to the NRC in writing for review and approval.

In a letter dated March 9, 1994, the NRC concluded its assessment of the inspection findings and issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $5,000. The violations identified during the inspection are of significant regulatory concern because they indicated that:

- The radiation safety staff and radioactive material users had insufficient knowledge of license conditions and NRC requirements and an inadequate sense of accountability regarding compliance with radiation safcty requirements, and
- Licensee management was ineffective in completing self-assessments that assured safe program implementation.

The Notice required the Licensee to respond to the specific violations. In addition to that response, the NRC requested that the Licensee provide a Safety Performance Improvement Program (SPIP) which would result in: (1) A complete and thorough evaluation of the radiation safety practices and program by qualified persons to determine how the Licensee is currently complying with NRC regulations and the conditions of the license; (2) a compilation of radiation safety deficiencies from that effort; (3) a complete root cause analysis of those deficiencies; and (4) a description of corrective actions to accomplish the improvements necessary for lasting correction of the deficiencies.

III

On April 7, 1994, and May 25, 1994, the Licensee provided written responses to the Notice, including payment of the $5,000 proposed civil penalty and a description of the SPIP. After discussion of the SPIP with NRC staff on June 14 and June 17, 1994, the Licensee submitted a revised SPIP to the NRC on June 20, 1994. The Licensee's revised SPIP is divided into four phases. The Licensee has agreed to follow the specific actions and time milestones outlined in the SPIP.

Phase One of the SPIP involves hiring and directing an independent health physics consulting firm to review the Licensee's authorized activities and report the findings to the Licensee's management by July 15, 1994.

Phase Two of the SPIP involves assigning specific Radiation Safety Committee (RSC) members and Health Physics staff members to groups of authorized users to assist users in complying with the licensed program and NRC regulations and to provide a conduit for reporting the status of licensed activities to Licensee management. The Health Physics staff will also be assigned segments of the radiation safety program to review and assure compliance with the license and NRC requirements and, as necessary, draft procedures and associated documentation to implement the program. This phase will also include: (1) Development of an internal enforcement program that addresses compliance with radiation safety requirements and establishes protocols for implementing corrective actions; (2) assessment of personnel training and qualifications; (3) evaluation of laboratory equipment; and (4) development of computerized management systems. The Licensee also has committed to hire one additional health physicist to assist with the radiation safety program improvement. Phase Two will be completed by the end of December 1994.

Phase Three of the SPIP involves an ongoing assessment of the corrective actions taken in response to findings in Phases One and Two, a second independent audit by an outside health physics consultant and annual audits by the RSO and RSC with reports to the Chancellor, Provost, and Vice Chancellor for Administrative Services. Phase Three will be completed by the end of December 1995.

Phase Four involves continuing reassessment of the program.

In light of the violations underlying the March 9, 1994 enforcement action, the public health and safety require improvement of the Licensee's radiation safety program. The NRC staff has reviewed the Licensee's SPIP. I find that the Licensee's commitments as set forth in its letter of June 20, 1994, are acceptable and necessary and conclude that if these commitments are effectively implemented the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments in its June 20, 1994 letter be confirmed by this Order. The Licensee agreed to the issuance of this Order during a telephone call between Mr. John A. Grobe, Chief, Nuclear Materials Inspection Section II, Region III, NRC, and Dr. Susan Langhorst, Radiation Safety Officer, of the Licensee's staff on July 12, 1994. Pursuant to 10 CFR 2.202, I have also determined that, based on the Licensee's consent to this Order and the significance of the necessary program improvements described above, the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 20, 30 and 35, it is hereby ordered that, effective immediately, license no. 24–00513–32 is modified as follows:

The Licensee shall complete the specific action items within the time limitations stated in the Safety Performance Improvement Program submitted to the NRC in its letter dated June 20, 1994. If additional time is required to meet a step, a written request must be submitted with the reason for the request and the new timeframe for completion. Until approved in writing by the Regional Administrator, Region III, the previously approved schedule must be met.

The Regional Administrator, Region III, may relax or rescind, in writing, any aspect of the above condition upon a showing by the License of good cause.

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC

20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearing and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 13th day of July 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–17730 Filed 7–20–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cost Accounting Standards Disclosure Statement for Educational Institutions

AGENCY: Office of Management and Budget.

ACTION: Public information collection requirement.

SUMMARY: Form to be used by educational institutions receiving more than $25 million per year in sponsored agreements with the Federal Government. They will be required to disclose their major cost accounting practices.

FOR FURTHER INFORMATION CONTACT: Jack Arthur, 202–395–7250.

SUPPLEMENTARY INFORMATION: Attached to this notice is the material for inclusion in the **Federal Register**.

John B. Arthur,

Assistant Director for Administration.

Public Information Collection Requirements Submitted to OMB for Review

The Office of Management and Budget has submitted for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35):

Title: "Cost Accounting Standards Disclosure Statement for Educational Institutions."
Type of Request: New Collection
OMB Number: New
Form Number: CASB DS–2
Description: Form to be used by educational institutions receiving more than $25 million per year in sponsored agreements with the Federal Government. They will be required to disclose their major cost accounting practices.
Respondents: Educational institutions
Estimated Number of Respondents: 130
Estimated Burden Hours per Respondent: 40 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 5200 hours.

Copies of the submission may be obtained by calling Barbara Diering at (202) 395–3254. Comments regarding this information collection should be addressed either to Edward Springer, OMB Desk Officer, Room 10236 NEOB, Washington, DC 20503 or to Barbara Diering, Office of Management and Budget, Room 9001 NEOB, Washington, DC 20503.

[FR Doc. 94–17757 Filed 7–20–94; 8:45 am]

BILLING CODE 3110–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Public Information Collection Requirements Submitted to OMB for Review

Date: July 21, 1994.

PADC has submitted the following extension of a public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511 (44 U.S.C. Ch. 35). Copies of the submission may be obtained by calling the PADC clearance officer listed. Send comments to the OMB reviewer listed and to the PADC clearance officer.

Pennsylvania Avenue Development Corporation

OMB Number: 3208
Form Number: No form number available; information requested in the Affirmative Action Quarterly Workforce Report for the Federal Triangle Development Project in Washington, DC.
Title: Affirmative Action Quarterly Workforce Report
Description: Under the authority of the Pennsylvania Avenue Development Corporation Act, as amended (Pub. L. 92–578), and PADC's Affirmative Action Policy and Procedure, 36 CFR Part 906, PADC has requested the developer of the Federal Triangle site in Washington, DC to obtain, on a voluntary basis, detailed statistics of racial and ethnic composition of the construction workforce on the project.
Respondents: Construction contractors
Clearance Officer: Talbot J. Nicholas II, Attorney, (202) 724–9055, PADC, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004.
OMB Reviewer: Don Arbuckle, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th St., NW., room 10201 Washington, DC 20503.

Dated: July 13, 1994.

Lester M. Hunkele, III,

Executive Director.

[FR Doc. 94–17759 Filed 7–20–94; 8:45 am]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34381; File No. SR–DGOC–93–04]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Approving Proposed Rule Change Modifying Exercise Settlement Date and Buy-In Procedures

July 14, 1994.

On December 27, 1993, Delta Government Options Corp. ("DGOC") filed a proposed rule change (File No. SR–DGOC–94–04) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] On February 16, 1994,

[1] 15 U.S.C. 78s(b) (1988).

and on March 4, 1994, DGOC submitted substantive amendments to the filing.[2] Notice of the proposal was published in the **Federal Register** on May 25, 1994, to solicit comments from interested persons.[3] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change modifies DGOC's exercise settlement procedures. Under current practice, the exercise settlement date, depending on certain factors, occurs from two to five business days following the expiration date or the date on which an exercise notice is tendered. For an option contract on a Treasury bond or a Treasury note exercised on a day preceding the expiration date, the exercise settlement date is the next business day following the day on which the exercise notice is properly assigned to a participant. The proposal makes no change to this provision of DGOC's rules. For an option contract on a Treasury bond or a Treasury note exercised on the expiration date, the exercise settlement date will now be the next business day following the expiration date for those contracts. Currently, the exercise settlement date for such contracts is the third business day following the expiration date. Also, under the proposed rule change, for an option contract on a Treasury bill, the exercise settlement date will be the next business day after an exercise notice is properly tendered. Currently, the exercise settlement date is Thursday of the week in which the exercise notice is properly tendered.

In connection with the modifications to the exercise settlement date, DGOC has amended Section 1005 of its Procedures to provide that DGOC will allocate exercise settlement obligations prior to 8:00 a.m. on the business day prior to the exercise settlement date. Previously, DGOC allocated exercise settlement obligations on the second business day prior to the exercise settlement date.

DGOC also has amended Section 1102 of its Procedures to clarify its buy-in process applicable when a participant fails to make a required delivery of Treasury securities to DGOC. First, upon the request of the participant failing to deliver and with good cause shown, DGOC is now authorized to defer the execution of a buy-in if Delta has reason to believe that the delivery default will be cured on that other arrangement adequate to protect Delta's interests have been made.[4] Previously, DGOC could defer the execution of a buy-in for no more than twenty-four hours from the time delivery was due. Second, the timing for the execution of a buy-in has been set forth with specificity. Under the more specific procedures, DGOC may transmit a notice of buy-in to the participant which failed to deliver after the elapse of thirty calendar days after the failure to deliver. DGOC must deliver in duplicate a written notice of buy-in no later than 12:00 noon five business days before the proposed execution date of the buy-in. The amended section also sets forth the information DGOC must supply to the participant in the buy-in notice.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[5] Sections 17A(b)(3) (A) and (F) of the Act[6] require that the rules of clearing agencies be designed to promote the prompt and accurate clearance and to assure the safeguarding of funds which are under the custody or control of a clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

One purpose of the proposal is to respond to participants who have requested that DGOC's settlement procedures more closely follow the practices already established in the over-the-counter ("OTC") marketplace for the settlement of purchases and sales of Treasury securities and for the settlement of exercised options on such securities. by shortening DGOC's settlement periods to conform to the industry standards, DGOC will reduce the amount of time such settlement obligations remain outstanding which in turn will reduce credit exposure to DGOC as well as generally in the settling of options on Government securities. DGOC's use of the same settlement period as is used in settlement of similar OTC options will help to ensure a consistent approach among clearing entities and should serve as a platform for additional coordination among clearing entities clearing identical or complimentary securities.

Because DGOC's current settlement period of two to five business days is longer than the settlement period for similar OTC products cleared outside of DGOC, DGOC-issued options carry a price adjustment for the additional financing costs. As a result, the price of DGOC-issued options does not match exactly those of similar OTC-traded options. Implementation of DGOC's revised settlement procedures will make the relative values of DGOC-issued options comparable to those of OTC-traded options and will eliminate participants' need to make the additional calculations necessary to correlate the price of DGOC-issued options with the price of OTC-traded options. Therefore, this proposal should provide participants greater ease in trading and exercising options issued by DGOC. The proposal also should result in more options on Government securities being cleared and settled through the automated facilities of DGOC, a registered clearing agency which participates in the national system for the clearance and settlement of securities transactions. These are options transactions that otherwise would be cleared through decentralized and labor intensive processes.

In connection with the shorter settlement time frames, the rule change enables DGOC to allocate exercise settlement obligations prior to 8:00 a.m. on the day prior to settlement and, as noted above, permits accelerated settlement time frames that are more consistent with settlement of exercised options and settlement of securities in the cash market. These changes should help DGOC to promote the prompt and accurate clearance and settlement of securities transactions and should foster cooperation and coordination by persons engaged in the clearance and settlement of securities transactions. The proposal also clarifies DGOC's buy-in procedures while providing DGOC with more flexibility concerning buy-ins. The Commission believes that these changes improve DGOC's ability to deal with the risks associated with the failure of a participant to fulfill its delivery obligation. By doing so, the modified buy-in procedures better enables DGOC to fulfill its statutory obligations to safeguard securities and funds within its possession or control for which it is responsible.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly Section 17A of the Act, and the rules and regulations thereunder.

[2] Amendment No. 2 completely superseded all previous submissions filed in connection with the proposed rule change, File No. SR–DGOC–93–04.

[3] Securities Exchange Act Release No. 34083 (May 18, 1994), 59 FR 27087.

[4] Section 1102 of DGOC's Procedures authorizes DGOC to buy-in Treasury securities for the account and liability of a participant that fails to fulfill its delivery obligation.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78–1(b)(3) (A) and (F) (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the above-mentioned proposed rule change (File No. SR–DGOC–93–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17710 Filed 7–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34390; File No. SR–NYSE–94–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Approval of Member Organizations in Other Than Partnership or Corporate Form Under Rule 311(f)

July 15, 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 February 22, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to amend Rule 311(f) as follows, with italics representing the language added:

Rule 311

(f) Every member firm shall be a partnership and every member corporation shall be a corporation created or organized under the laws of, and shall maintain its principal place of business in, the United States or any State thereof. *The Exchange may, in its discretion, and on such terms and conditions as the Exchange may prescribe, approve as a member organization entities that have characteristics essentially similar to corporations, partnerships, or both. Such entities, and persons associated therewith, shall, upon approval, be fully, formally and effectively subject to the jurisdiction, and to the Constitution and Rules, of the Exchange to the same extent and degree as are any other member organizations and persons associated therewith.*

[7] 15 U.S.C. 78s(b) (1988).

[8] 17 CFR 200.30–3(a)(12) (1993).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Article 1, Section 3 of the NYSE Constitution states that the term "member organization" includes a "member firm" and "member corporation." A "member firm" is defined as a partnership.

Recently, the Exchange has received requests from several member organizations to permit them to reorganize as business trusts or limited liability companies. Neither of these organizational structures is currently specifically included in the definition of a member organization.

The proposed amendment would enable the Exchange, in its discretion, and on such terms and conditions as the Exchange may prescribe, to approve business trusts,[1] limited liability companies,[2] and other organizational structures as member organizations. However, any such entity would be required to have characteristics essentially similar to corporations or partnerships.

Noncorporate or partnership entities would have to be structured in such a format that would qualify as a broker or dealer registered with the Commission pursuant to the Act, since this is a prerequisite to becoming an Exchange member organization.

The NYSE staff would review each application on a case-by-case basis as it does with all member organization applicants. However, prior to approving any such organization for membership, the staff would have to be satisfied that: (1) the Exchange would legally have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it permits registered brokers or dealers as set forth herein to become member organizations of the Exchange.

The proposed rule change is also consistent with Section 6(b)(5) of the Act in that it broadens the types of entities which the Exchange may approve as a member organization and therefore avoids possible unfair discrimination.

Finally, it is consistent with Section 6(b)(8) of the Act in that it serves to remove possible burdens on competition resulting from organizational structure not necessary or appropriate in furtherance of the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden in competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

[1] The term "business trust" is generally used to describe a trust in which the managers are principals, and the shareholders are cestuis que trust. The essential attribute is that property is placed in the hands of trustees who manage and deal with it for the use and benefit of beneficiaries. *Black's Law Dictionary* 180 (5th ed. 1979).

[2] A limited liability company ("LLC") combines various characteristics of both corporations and partnerships. For example, an LLC is a non-corporate entity under which neither the owners nor those managing the business are personally liable for the entity's obligations, however, the LLC is treated as a pass-through entity for federal income tax purposes. See Robert R. Keating et al., The Limited Liability Company: A Study of the Emerging Entity, 47 Bus. Law. 378 (1992).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–01 and should be submitted by August 11, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17760 Filed 7–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34387; File No. SR–PHLX–94–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc., Relating to Listing of Reduced-Value Long-Term Options on the National Over-the-Counter Index

July 15, 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 January 12, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[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 PHLX proposes to amend its rules to list long-term reduced-value options equal to one-tenth the value of the Exchange's current National Over-the-Counter Index ("Index" or "XOC"). Options on the long-term, reduced-value XOC ("reduced-value XOC") will have expirations of up to 36 months. For aggregation purposes, 10 reduced-value long-term XOC options are the equivalent of one full-value XOC contract.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

1. Description of the Proposal

Since 1985 the PHLX has been trading options on the XOC, a broad-based, capitalization-weighted index comprised of the 100 largest domestic corporations whose stocks are traded over-the-counter ("OTC") by at least four market makers and are not listed on any exchange.[2] All of the XOC's component stocks are traded through the National Association of Securities Dealers Automated Quotations ("NASDAQ") system and are National Market Securities ("NMS"). On February 26, 1991, the Commission approved a proposed rule change, SR–PHLX–90–38, allowing the Exchange to list long-term options having up to 36 months to expiration on any of the Exchange's broad-based index options.[3]

The PHLX proposes to list long-term options on a reduced-value XOC index that would be computed at one-tenth the value of the Exchange's current XOC index. The proposed options will have expirations of up to 36 months. The PHLX believes that the listing of long-term, reduced-value XOC options will provide retail investors with the opportunity to obtain long term portfolio protection at an affordable price.

2. Composition of the Index

The XOC is a capitalization-weighted index comprised of the 100 most highly capitalized NMS common stock issues traded through the NASDAQ system. The XOC, which was developed by the Exchange and is computed by Bridge Data, is comprised of stocks from approximately thirty industry groups and responds to the general market trends of the OTC market. The Index is updated every 15 seconds during the trading day. Pursuant to PHLX Rule 1100A, "Dissemination of Information," updated Index values are disseminated and displayed by means of the Consolidated Last Sale Reporting System and the facilities of the Options Price Reporting Authority ("OPRA"). The closing Index value is published in The Wall Street Journal and other financial publications.

3. Index Construction and Calculation

In order to keep the XOC current and representative of general market trends in the OTC market, each January and July the Exchange identifies and ranks the 125 most highly capitalized NMS common stock issues. The stocks included in the 125 ranking are compared to the issues in the Index, and issue(s) not ranked within the 100 most highly capitalized issues are deleted from the Index and replaced by the issue(s) which has increased in capitalization since the previous

[1] On March 1, 1994, the PHLX amended PHLX Rule 1001A, "Position Limits," to add paragraphs (d)(i) and (ii), which describe the aggregation procedures for quarterly expiring options, reduced-value long-term Value Line Composite Index options, and reduced-value long-term National Over-the-Counter Index options. See Letter from Edith Hallahan, Special Counsel, PHLX, to Sharon Lawson, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 28, 1994 ("Amendment No. 1"). After the provisions proposed in paragraph (d)(i) were approved in Securities Exchange Act Release No. 34234 (June 17, 1994), the PHLX deleted paragraph (d)(i) from the current proposal. See Letter from Edith Hallahan, Special Counsel, PHLX, to Mike Walinskas, Branch Chief, Options Regulation, Division, Commission, dated July 13, 1994 ("Amendment No. 2").

[2] See Securities Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985).

[3] See Securities Exchange Act Release No. 28910 (February 26, 1991), 56 FR 9032 (March 4, 1991).

ranking. Thus, on a semi-annual basis, the XOC is adjusted to reflect changes in the capitalization ranking of NMS stock issues. In addition, any time a component stock registers on a national securities exchange or is the subject of a merger or acquisition, the stock is deleted from the Index and replaced by the next highest capitalized issue as identified in the most current ranking of the 125 most highly capitalized NMS issues. The Index is adjusted to reflect stock splits and dividends.

In computing the value of the Index, the current market value of each component stock is multiplied by the number of outstanding shares. The resulting market values are added together to determine the current aggregate market value of the issues in the Index. To compute the current Index value, the aggregate market value is divided by the base market value and multiplied by 100. The base value is adjusted periodically to account for changes in capitalization of any of the component stocks resulting from mergers, acquisitions, listings, and substitutions.

4. Contract Specifications

The proposed long-term reduced-value XOC options will trade independently of an in addition to currently listed full-value XOC options and will be subject to the same rules that presently govern the trading of full-value XOC options, including sales practice rules, margin requirements, and floor trading procedures. The strike price intervals for the proposed options will be fixed at no less than $2.50, and the proposed options will be aggregated with full-value XOC options for position and exercise limit purposes.

The PHLX has determined that since positions in the full-value XOC options and those in the proposed reduced-value long-term XOC options are based upon the same underlying stock index, the proposed reduced-value XOC options will be aggregated with full-value XOC options for position and exercise limit purposes. Accordingly, the PHLX proposes to amend PHLX Rule 1001A to state that for aggregation purposes, ten reduced-value long-term XOC options are the equivalent of one full-value XOC contract. Since one full-value XOC contract is equivalent to ten reduced-value XOC contracts, each reduced-value XOC contract will be considered one-tenth of a full-value XOC contract when the contracts are aggregated for position and exercise limit purposes.

Thus, under the current XOC position limit of 10,000 contracts, an option holder with no full-size XOC contracts would be permitted to hold 100,000 reduced-value XOC contracts. Similar to full-value XOC options, the proposed reduced-value options will feature American-style exercise. The PHLX will continuously calculate and disseminate the underlying index value for the proposed reduced-value XOC options in addition to the full-value Index.

As a result of the one-tenth reduced-value feature of the proposed options, the reduced-value XOC may vary slightly from one-tenth of the full-value Index. In this regard, the PHLX intends to adopt the following procedure in rounding the reduced-value Index: the PHLX will divide the calculated value of the XOC by ten and round the resulting quotient to the nearest one-hundredth. The digits one through four will be rounded down to the next number and digits five through nine will be rounded up to the next number.

Upon Commission approval of the proposal, the PHLX intends to list initial long-term option series on the new reduced-value XOC with December 1995 and December 1996 expirations. While the initial series listings would have less than 36 months to expiration, thereafter, the PHLX plans to list options with 36-month expirations at each December expiration, resulting in the introduction of a December 1977 expiration after the December 1994 expiration. Initially, three strike prices for calls and puts will be listed at and surrounding the prevailing reduced-value XOC option. However, the Exchange may list only a put or a call if two strike prices are introduced. The Exchange also proposes to list additional strike prices when the market reaches either the highest or lowest existing strike price. The Exchange believes this procedure will result in the listing of only a limited number of series for any expiration, thereby eliminating confusion that might otherwise be caused by a myriad of strike prices and expirations.

The Exchange expects that its proposed policy of listing strike prices on the reduced-value XOC will permit the offering of options at premiums between $2.00 and $7.00 ($200 to $700 per contract) based upon current market volatility and other pricing considerations. Such premiums appear to be in the desired range of prices that investors have favored in trading index warrants. Such premiums could not be achieved by using full-size XOC options without the listing of strike prices so deeply out of the money and away from the current index value as to offer investors limited ability to participate in the market or protect a portfolio of primarily OTCV stocks.

The PHLX believes that the proposal is consistent with Section 6 of the Act, in general, and in particular, with Section 6(b)(5), in that it is designed to facilitate transactions in securities and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PHLX has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[4] Specifically, the Commission believes that the reduced-value long-term XOC options will benefit investors by providing them with a valuable hedging and investing vehicle that should reflect accurately the overall movement of the OTC market and provide investors with additional means to hedge portfolios against long-term market risk at a reduce cost. The Commission believes that the lower cost of the reduced-value XOC options should allow investors to hedge their portfolios with a smaller outlay of capital and may facilitate investor participation in the market for XOC options, which should, in turn, help to maintain the depth and liquidity of the market for XOC options, thereby protecting investors and the public interest.

The Commission believes that trading in the reduced-value XOC options will not have an adverse market impact or be susceptible to manipulation.[5] The Commission has determined previously that the full-value XOC is a broad-based

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] The Commission notes that, prior to listing long-term reduced-value XOC options, the PHLX will be required to provide written representations that both the Exchange and OPRA have the necessary systems capacity to support the new series of long-term reduced-value XOC options.

index[6] and does not believe that dividing the XOC by ten changes this determination. The reduced-value XOC index will contain the same stocks with the same weightings as the XOC and will be calculated in the same manner as the XOC (with the exception of being one-tenth the value of the XOC). Accordingly, the Commission finds that the reduced-value XOC is a broad-based index. Moreover, the Commission believes that any potential manipulation concerns raised by the reduced-value XOC options are minimized by the fact that positions in the reduced-value XOC options and full-value XOC options will be aggregated for position and exercise limit purposes.[7] In addition, the Commission notes that the same Exchange surveillance procedures applied to full-value XOC options will be used for the reduced-value XOC options.[8]

Because the Exchange's existing rules applicable to stock index options, including, among others, sales practice rules, margin requirements, and position and exercise limits, will apply to the reduced-value XOC options, the Commission believes that the market for the reduced-value XOC options should be fair and orderly and does not raise any new customer protection concerns.

The Commission finds good cause for approving the proposal and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In light of the fact that the Commission has approved proposals by other exchanges to list reduced-value options on existing indexes, and in light of PHLX rule 1101A(b)(iii), which allows the PHLX to list series of long term options on stock indexes, the Commission believes that the proposal to list long term reduced-value XOC options presents no new regulatory issues. In addition, the Commission believes that Amendment Nos. 1 and 2 clarify and strengthen the Exchange's proposal. Accordingly, the Commission believes that it is consistent with the Act to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

[6] See Securities Exchange Act Release No. 33634 (February 17, 1994), 59 FR 9263 (February 25, 1994).

[7] In this regard, it is reasonable for the PHLX to count ten reduced-value XOC option contract as equivalent to one full-value XOC contract for position and exercise limit purposes because the underlying value of one XOC contract is equal to the underlying value of ten reduced-value XOC contracts.

[8] Telephone conversation between Edith Hallahan, Attorney, PHLX, and Yvonne Fraticelli, Attorney, Options Branch, Division, on July 6, 1994.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–94–03 and should be submitted by [insert date 21 days from date of publication].

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9] that the proposed rule change (SR–PHLX–94–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17761 Filed 7–20–94; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1993).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Kent County International Airport Grand Rapids, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Kent County, Michigan, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On October 29, 1993, the FAA determined that the noise exposure maps submitted by Kent County under Part 150 were in compliance with applicable requirements. On April 26, 1994, the Assistant Administrator for Airports approved the Kent County International Airport noise compatibility program.

A total of ten (10) measures were included in the Kent County International Airport recommended program. Of the ten (10) measures, two (2) are "Program Management," three (3) are "Noise Abatement," and five (5) are "Land Use." The FAA gave outright approval for nine (9) measures; the tenth measure was given partial approval.

EFFECTIVE DATE: The effective date of the FAA's approval of the Kent County International Airport noise compatibility program is April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313–487–7280. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Kent County International Airport, effective April 26, 1994.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

Kent County submitted to the FAA on May 4, 1992, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 24, 1987 through May 4, 1992. The Kent County International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on March 4, 1993. Notice of this determination was published in the Federal Register on March 22, 1993.

The Kent County International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on October 29, 1993, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained ten (10) proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective April 26, 1994.

Outright approval was granted for nine (9) of the specific program elements. "Land Use Measure No. 2" was partially approved. The measure included non-noise related zoning (height and safety). For the purpose of Part 150, only the noise zoning was approved. The other approved measures include: Noise Abatement Advisory Committee, Noise Complaint Program, Noise Abatement Departure Procedures, Greater Percent of Stage 3 Aircraft, Portable Noise Monitoring Equipment, Comprehensive Land Use Planning and Zoning, Utilize Disclosure Ordinance, Acoustical Treatment/Aviation Easements, and Purchase Assurance Program.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on April 26, 1994. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations.

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Kent County Department of Aeronautics, Kent County International Airport, 5500 44th Street, SE., Grand Rapids, Michigan 49512

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, July 1, 1994

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 94–17801 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–M

Proposed Establishment of the Springfield, MO, Class C Airspace Area; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice is announcing a fact-finding informal airspace meeting to solicit information from airspace users and others concerning a proposal to establish Class C airspace at Springfield, MO. The FAA is holding this meeting to provide interested parties the opportunity to present input on the proposal. All comments received during this meeting will be considered prior to any establishment or issuance of a notice of proposed rulemaking.

TIME AND DATE: The informal airspace meeting will be held at 7:00 p.m. on Wednesday, September 7, 1994. Comments must be received on or before November 7, 1994.

DATES: Wednesday, September 7, 1994.

PLACE: Cox North Hospital, (Fountain Plaza Room), 1423 North Jefferson, Springfield, MO 65802.

COMMENTS: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, ACE–500, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Kathy J. Randolph, FAA, Central Regional Office, ACE–530, telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by a representative of the FAA Central Region. Representatives from the FAA will present a formal briefing on the proposed Class C airspace area establishment. Each participant will be given an opportunity to deliver comments or make a presentation.

(b) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be

asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meeting will be accepted. Participants wishing to submit handout material should present three *copies* to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) The meeting will not be formally recorded. However, a summary of the comments made at the meeting will be filed in the docket.

Agenda for the Meeting

Opening Remarks and Discussion of Meeting Procedures
Briefing on Background for Proposal
Public Presentations
Closing Comments

Issued in Washington, DC, on July 11, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–17802 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–P

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yakima Air Terminal, Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yakima Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and 14 CFR part 158.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., Suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce Loy, Airport Manager at the following address: Yakima Air Terminal Board, 2400 West Washington Avenue, Yakima, WA 98903.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Yakima Air Terminal Board under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Hall, Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Avenue SW, suite 250, Renton, WA 98055–4056, (206) 227–2662. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Yakima Air Terminal under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 8, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Yakima Air Terminal Board was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 22, 1994. Although the effective date of the charge proposed by the Yakima Air Terminal Board has passed, the charge will not become effective unless and until it receives FAA approval, and any delay in the timing of the effective date will also extend the proposed charge expiration date by a corresponding period.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1994.

Proposed charge expiration date: September 1, 1994.

Total estimated PFC revenue: $14,745.00.

Brief description of proposed project(s): Snow removal equipment, Ramp plow.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Exempt categories shall be air taxi/commercial operators, other than an air carriers, who conduct operations in air commerce carrying persons for compensation or hire, except, air taxi/commercial operators operating public or private charters in aircraft with a seating capacity of 60 or more shall be construed in this regulation to be an air carrier, unless the public or private charter is exclusively for government use.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yakima Air Terminal.

Issued in Renton, Washington on July 8, 1994.

Sarah P. Dalton,

Acting Manager, Planning, Programming and Capacity Branch, Airports Division, Northwest Mountain Region.

[FR Doc. 94–17805 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 1994, there were four applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Jefferson, Beaumont, Texas.

Application Number: 94–01–C–00–BPT.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $563,126.

Charge Effective Date: September 1, 1994.

Estimated Charge Expiration Date: November 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Airport planning studies, Taxiway safety improvements, Runway safety improvements, Access road safety improvements.

Brief Description of Project Approved-in-Part for Collection and Use: Land acquisition/easements and perimeter fencing.

Determination: Approved in part. The land acquisition element of this project being disapproved at this time. The FAA has determined that this element of the project does not meet the requirements of § 158.29(b)(iv). The requirement pertaining to the National Environmental Policy Act of 1969 for this element of the project has not been met.

Decision Date: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

Application Number: 94–01–C–00–BUR.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $34,989,000.

Earliest Charge Effective Date: September 1, 1994.

Estimated Charge Expiration Date: October 1, 2001.

Class of Air Carriers not Required to Collect PFC's Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Burbank-Glendale-Pasadena Airport.

Brief Description of Projects Approved for Collection and Use: Reconstruct runway 8/26, Reconstruct runway 15/33, Acquire land—Plant C–1.

Brief Description of Projects Approved for Collection Only: Extend taxiway B, Construct aircraft rescue and firefighting station, Acquire land—Plant B–6.

Decision Date: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western-Pacific Regional Airports Division, (310) 297–1029.

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.

Application Number: 94–03–C–00–HSV.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue Collection: $20,831,051.

Total Approved Net PFC for Use in This Decision: $11,249,448.

Charge Effective Date for This Location: June 1, 1992.

Estimated Charge Expiration Date for This Approval: November 1, 2008.

Class of Air Carriers not Required to Collect PFC's No change from previously approved application of March 6, 1992.

Brief Description of Projects Approved for Collection and Use: Runway/taxiway sign upgrade, Disabled passenger lift.

Brief Description of Projects Approved for Use: Land acquisition, Runway protection zone/low level windshear alert system property, Security upgrade—107.14, Airport master plan update, Airport maintenance/snow removal equipment storage facility, Air carrier apron rehabilitation, Fire station expansion.

Decision Date: June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Jackson Airports District Office, (601) 965–4628.

Public Agency: City of Pocatello, Pocatello, Idaho.

Application Number: 94–01–C–00–PIH.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $400,000.

Earliest Permissible Charge Effective Date: September 1, 1994.

Estimated Charge Expiration Date: March 1, 2002.

Class of Air Carriers not Required to Collect PFC's Air taxi/commercial operators using aircraft with less than 20 seats and a maximum payload capacity of less than 6,000 pounds.

Determination: Approved. Based on the information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Pocatello Regional Airport.

Brief Description of Projects Approved for Collection and Use: Equipment purchase, Terminal building expansion and remodel.

Brief Description of Projects Approved for Collection Only: Pavement rehabilitation.

Decision Date: June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Simmons, Seattle Airports District Office, (206) 227–2656.

Issued in Washington, D.C. on July 8, 1994.

Lowell H. Johnson,

Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
92–01–I–00–HSV., Huntsville Intl—Carl T Jones Field, Huntsville	03/06/1992	$3	$36,472,657	06/01/1992	11/01/2008
93–02–V–00–HSV., Huntsville Intl—Carl T Jones Field, Huntsville	06/03/1993	3	0	09/01/1993	11/01/2008
92–01–C–00–MSL Muscle Shoals Regional, Muscle Shoals., .	02/18/1992	3	100,000	06/01/1992	02/01/1995
94–02–C–00–MSL., Muscle Shoals Regional, Muscle Shoals .	05/17/1994	3	60,000	08/01/1994	10/01/1996
Arizona:					
92–01–C–00–FLG., Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–YUM., Yuma MCAS/Yuma International, Yuma .	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
Arkansas:					
94–01–I–00–FSM., Fort Smith Municipal, Fort Smith	05/18/1994	3	4,040,076	08/01/1994	04/01/2007
California:					
92–01–C–00–ACV., Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
93–01–C–00–CIC., Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1997
92–01–C–00–IYK., Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–01–C–00–LGB., Long Beach-Daugherty Field, Long Beach	12/30/1993	3	3,533,766	03/01/1994	03/01/1998
93–01–C–00–LAX., Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
94–01–C–00–MOD., Modesto City-County Arpi-Sham, Modesto	05/23/1994	3	300,370	08/01/1994	08/01/2001
93–01–C–00–MRY., Monterey Peninsula, Monterey	10/08/1993	3	3,960,855	01/01/1994	06/01/2000
92–01–C–00–OAK., Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
94–02–C–00–OAK., Metropolitan Oakland International, Oakland	02/23/1994	3	8,999,000	05/01/1994	04/01/1995
93–01–I–00–ONT., Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–PSP., Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–SMF., Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92–01–C–00–SJC., San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93–02–V–00–SJC., San Jose International, San Jose	02/22/1993	3	0	05/01/1993	08/01/1995
93–03–C–00–SJC., San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92–01–C–00–SBP., San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92–01–C–00–STS., Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91–01–I–00–TVL., Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
92–01–C–00–COS., Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92–01–C–00–DVX., Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93–01–C–00–EGE., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93–01–C–00–FNL., Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92–01–C–00–GJT., Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93–01–C–00–GUC., Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93–01–C–00–HDN., Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93–01–C–00–MTJ., Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93–01–C–00–PUB., Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92–01–C–00–SBS., Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92–01–C–00–TEX., Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut:					
93–01–C–00–HVN., Tweed-New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999
93–02–I–00–BDL., Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
94–03–U–00–BDL., Bradley International, Windsor Locks	02/22/1994	3	0	05/01/1994	09/01/1995
Florida:					
93–01–C–00–DAB., Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92–01–C–00–RSW., Southwest Florida International, Fort Myers	08/31/1992	3	253,858,512	11/01/1992	06/01/2014
93–02–U–00–RSW., Southwest Florida International, Fort Myers	05/10/1993	3	0	11/01/1992	06/01/2014
93–01–C–00–JAX., Jacksonville International, Jacksonville	01/28/1994	3	12,258,255	05/01/1994	07/01/1997
92–01–C–00–EYW., Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92–01–C–00–MTH., Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92–01–C–00–MCO., Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93–02–C–00–MCO., Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
93–01–I–00–PFN., Panama City-Bay County International, Panama City	12/01/1993	3	8,238,499	02/01/1994	10/01/2007
92–01–C–00–PNS., Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92–01–I–00–SRG., Sarasota-Brandenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92–01–I–00–TLH., Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93–02–U–00–TLH., Tallahassee Regional, Tallahassee	12/30/1993	3	0	02/01/1993	06/01/1998
93–01–C–00–TPA., Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
93–01–C–00–PBI., Palm Beach International, West Palm Beach	01/26/1994	3	38,801,096	04/01/1994	04/01/1999
Georgia:					
93–01–C–00–CSG., Columbus Metropolitan, Columbus	10/01/1993	3	534,633	12/01/1993	06/01/1995
91–01–C–00–SAV., Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92–01–I–00–VLD., Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
94–01–C–00–BOI., Boise Air Terminal-Gowen Field, Boise	05/13/1994	3	36,857,774	08/01/1994	10/01/1998
93–01–01–00–SUN., Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92–01–C–00–IDA., Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
94–01–I–00–LWS., Lewiston-Nez Perce County, Lewiston	02/03/1994	3	229,610	05/01/1994	03/01/1997

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–C–00–TWF., Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
93–01–C–00–MDW., Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93–01–C–00–ORD., Chicago O'Hare International, Chicago	06/28/1993	0	0	09/01/1993	/ /
92–01–I–00–RFD., Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93–02–U–00–RFD., Greater Rockford, Rockford	09/02/1993	3	0	12/01/1993	10/01/1996
92–01–I–00–SPI., Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93–02–U–00–SPI., Capital, Springfield	04/28/1993	3	0	06/01/1992	02/01/1994
93–03–I–00–SPI., Capital, Springfield	11/24/1993	3	4,585,443	06/01/1992	02/01/2006
Indiana:					
92–01–C–00–FWA., Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93–01–C–00–IND., Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
93–01–C–00–DSM., Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	03/01/1994	04/01/1997
92–01–I–00–DBQ., Dubuque Regional, Dubuque	10/06/1992	3	148,500	01/01/1993	05/01/1994
94–02–C–00–DBQ., Dubuque Regional, Dubuque	02/09/1994	3	203,420	05/01/1994	02/01/1996
93–01–C–00–SUX., Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
94–01–C–00–ALO., Waterloo Municipal, Waterloo	03/29/1994	3	637,000	06/01/1994	06/01/1998
Kentucky:					
94–01–C–00–CVG., Cincinnati/Northern Kentucky Interna, Covington	03/30/1994	3	20,737,000	06/01/1994	09/01/1995
93–01–C–00–LEX., Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
93–01–C–00–PAH., Barkley Regional, Paducah	12/02/1993	3	386,550	03/01/1994	12/01/1998
Louisiana:					
92–01–I–00–BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93–02–U–00–BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	0	12/01/1992	12/01/1998
93–01–C–00–MSY., New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
93–02–U–00–MSY., New Orleans International/Moisant Field, New Orleans	11/16/1993	3	0	06/01/1993	04/01/2000
93–01–I–00–SHV., Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	02/01/1994	02/01/2019
Maine:					
93–01–C–00–PWM., Portland International Jetport, Portland	10/29/1993	3	12,233,751	02/01/1994	05/01/2001
Maryland:					
92–01–I–00–BWI., Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
94–01–I–00–CBE., Greater Cumberland Regional, Cumberland	03/30/1994	3	150,000	07/01/1994	07/01/1999
Massachusetts:					
93–01–C–00–BOS., General Edward L. Logan International, Boston	08/24/1993	3	604,794,000	11/01/1993	10/01/2011
92–01–C–00–ORH., Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92–01–C–00–DTW., Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92–01–I–00–ESC., Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93–01–C–00–FNT., Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92–01–I–00–GRR., Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92–01–C–00–CMX., Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93–01–C–00–IWD., Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93–01–C–00–LAN., Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92–01–I–00–MQT., Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
94–02–U–00–MQT., Marquette County, Marquette	04/06/1994	3	0	07/01/1994	04/01/1996
94–01–C–00–MKG., Muskegon County, Muskegon	02/24/1994	3	5,013,088	05/01/1994	05/01/2019
92–01–C–00–PLN., Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875,000	03/01/1993	06/01/1995
Minnesota:					
93–01–C–00–BRD., Brainerd-Crow Wing County Regioal, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
92–01–C–00–MSP., Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
94–02–C–00–MSP., Minneapolis-St. Paul International, Minneapolis	05/13/1994	3	113,064,000	08/01/1994	06/01/1998
Mississippi:					
91–01–C–00–GTR., Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92–01–C–00–GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	390,595	07/01/1992	12/01/1993
93–02–C–00–GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	11/02/1993	3	607,817	07/01/1992	12/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–C–00–PIB., Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93–01–C–00–JAN., Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92–01–C–00–MEI., Key Field Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
93–02–C–00–MEI., Key Field Meridian	10/19/1993	3	155,223	11/01/1992	08/01/1996
Missouri:					
93–01–C–00–SGF., Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92–01–C–00–STL., Lambert-St Louis International, St Louis	09/30/1992	3	84,607,850	012/01/1992	03/01/1996
Montana:					
93–01–C–00–BIL., Billings-Logan International, Billings	01/26/1994	3	5,672,136	04/01/1994	05/31/2002
93—01—C—00—BZN., Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
94–01–C–00–BTM., Bert Mooney, Butte	04/17/1994	3	410,202	07/01/1994	05/01/2000
92–01–C–00–GTF., Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00—GTF., Great Falls International, Great Falls	05/25/1993	3	0	11/01/1992	07/01/2002
92–01–C–00–HLN., Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–C–00–FCA., Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–MSO., Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91–01–C–00–LAS., McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–LAS., McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
94–03–U–00–LAS., McCarran International, Las Vegas	04/20/1994	0	0	07/01/1994	
93–01–C–00–RNO, Reno Cannon International, Reno	10/29/1993	3	34,263,607	01/01/1994	05/01/1999
New Hampshire:					
92–01–C–00–MHT., Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
92–01–C–00–EWR., Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
93–01–I–00–ALB., Albany County, Albany	12/03/1993	3	40,726,364	03/01/1994	04/01/2005
93–01–C–00–BGM., Binghamton Regional/Edwin A Link Fie, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–01–I–00–BUF., Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
92–01–I–00–ITH., Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92–01–C–00–JHW., Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822,	06/01/1993	06/01/1996
92–01–C–00–JFK., John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92–01–C–00–LGA., LaGuardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
93–01–C–00–PLB., Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
94–01–C–00–SLK., Adirondack, Saranac Lake	05/18/1994	3	121,952	08/01/1994	01/01/2003
92–01–C–00–HPN., Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Carolina:					
93–01–C–00–ILM., New Hanover International, Wilmington	11/02/1993	3	1,505,000	02/01/1994	08/01/1997
North Dakota:					
92–01–C–00–GFK., Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
93–01–C–00–MOT., Minot International, Minot	12/15/1993	3	1,569,483	03/01/1994	03/01/1999
Ohio:					
92–01–C–00–CAK., Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92–01–C–00–CLE., Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
94–02–U–00–CLE., Cleveland-Hopkins International, Cleveland	02/02/1994	3	0	05/01/1994	11/01/1995
92–01–I–00–CMH., Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93–02–I–00–CMH., Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93–03–U–00–CMH., Port Columbus International, Columbus	10/27/1993	3	0	10/01/1992	09/01/1996
93–01–C–00–TOL., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
94–01–C–00–YNG., Youngstown-Warren Regional, Youngstown	02/22/1994	3	351,180	05/01/1994	07/01/1996
Oklahoma:					
92–01–C–00–LAW., Lawton Municipal, Lawton	05/08/1992	3	482,135	08/01/1992	04/01/1996
92–01–I–00–TUL., Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995
93–02–U–00–TUL., Tulsa International, Tulsa	10/18/1993	3	0	02/01/1994	08/01/1995
Oregon:					
93–01–C–00–EUG., Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93–01–C–00–MFR., Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
93–01–C–00–OTH., North Bend Municipal, North Bend	11/24/1993	3	182,044	02/01/1994	01/01/1998
92–01–C–00–PDX., Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
93–01–C–00–RDM., Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania:					
92–01–I–00–ABE., Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92–01–C–00–ADO., Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92–01–C–00–ERI., Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–01–C–00–JST., Johnstown-Cambria County, Johnstown ..	08/31/1993	3	307,500	11/01/1993	02/01/1998
92–01–I–00–PHL., Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93–02–U–00–PHL., Philadelphia International, Philadelphia ...	05/14/1993	3	0	08/01/1993	07/01/1995
92–01–C–00–UNV., University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
93–01–C–00–AVP., Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	09/24/1993	3	2,369,566	12/01/1993	06/01/1997
Rhode Island:					
93–01–C–00–PVD., Theodore F. Green State, Providence	11/30/1993	3	103,885,286	02/01/1994	08/01/2013
South Carolina:					
93–01–C–00–CAE., Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
93–01–C–00–49J., Hilton Head, Hilton Head Island	11/19/1993	3	1,542,300	02/01/1994	03/01/1999
Tennessee:					
93–01–C–00–CHA., Lovell Field, Chattanooga	04/26/1994	3	7,177,253	07/01/1994	10/01/2002
93–01–C–00–TYS., McGhee Tyson, Knoxville	10/06/1993	3	5,681,615	01/01/1994	01/01/1997
92–01–I–00–MEM., Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
93–02–C–00–MEM., Memphis International, Memphis	01/14/1994	3	24,026,000	04/01/1994	10/01/1999
92–01–C–00–BNA., Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93–02–C–00–AUS., Robert Mueller Municipal, Austin	06/04/1993	3	6,181,800	11/01/1993	01/01/1995
93–01–C–00–CRP., Corpus Christi International, Corpus Christi	12/29/1993	3	5,540,745	03/01/1994	01/01/1998
94–01–C–00–DFW., Dallas/Fort Worth International, Dallas/Fort Worth	02/17/1994	3	15,000,000	07/01/1994	02/01/1996
92–01–C–00–ILE., Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
93–01–I–00–LRD., Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93–01–C–00–LBB., Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
94–02–U–00–LBB., Lubbock International, Lubbock	02/15/1994	3	0	05/01/1994	02/01/2000
92–01–I–00–MAF., Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
94–02–U–00–MAF., Midland International, Midland	04/14/1994	3	0	07/01/1994	01/01/2013
93–01–C–00–SJT., Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
93–01–C–00–TYR., Tyler Pounds Field, Tyler	12/20/1993	3	819,733	03/01/1994	07/01/1998
Virginia:					
92–01–I–00–CHO., Charlottesville-Albemarle, Charlottesville ..	06/11/1992	2	255,559	09/01/1992	11/01/1993
92–02–U–00–CHO., Charlottesville-Albemarle, Charlottesville	12/21/1992	2	0	09/01/1992	11/01/1993
93–03–U–00–CHO., Charlottesville-Albemarle, Charlottesville	10/20/1993	2	0	01/01/1994	11/01/1993
94–01–C–00–RIC., Richmond International (Byrd Field), Richmond	02/04/1994	3	30,976,072	05/01/1994	08/01/2005
93–01–C–00–IAD., Washington Dulles International, Washington, DC	10/18/1993	3	199,752,390	01/01/1994	11/01/2003
93–01–C–00–DCA., Washington National, Washington, DC ...	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
94–02–U–00–DCA., Washington National, Washington, DC ...	04/06/1994	3	0	07/01/1994	11/01/2000
Washington:					
93–01–C–00–BLI., Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	01/01/1995
93–01–C–00–PSC., Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93–01–C–00–CLM., William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
94–01–C–00–PUW., Pullman-Moscow Regional, Pullman	03/22/1994	1	169,288	06/01/1994	01/01/1998
92–01–C–00–SEA., Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93–02–C–00–SEA., Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	01/01/1994	01/01/1996
93–01–C–00–GEG., Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93–01–I–00–ALW., Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93–01–C–00–EAT., Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92–01–C–00–YKM., Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93–01–C–00–CRW., Yeager, Charleston	05/28/1993	3	3,254,126	08/01/1993	04/01/1998
93–01–C–00–CKB., Benedum, Clarksburg	12/29/1993	3	105,256	04/01/1994	04/01/1996
92–01–C–00–MGW., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
94–01–C–00–ATW., Outagamie County, Appleton	04/25/1994	3	3,233,645	07/01/1994	09/01/2000
92–01–C–00–GRB., Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
94–01–C–00–LSE., La Crosse Municipal, La Crosse	04/06/1994	3	795,299	08/01/1994	08/01/1997
93–01–C–00–MSN., Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93–01–I–00–CWA., Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93–01–C–00–RHI., Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93–01–C–00–CPR., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93–01–C–00–CYS., Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93–01–I–00–GCC., Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–01–C–00–JAC., Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
92–01–C–00–NGM., Agana NAS, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
93–02–C–00–NGM., Agana NAS, Agana	02/25/1994	3	258,408,107	05/01/1994	06/01/2021
Puerto Rico:					
92–01–C–00–BQN., Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92–01–C–00–PSE., Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
93–01–C–00–SJU., Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
93–02–U–00–SJU., Luis Munoz Marin International, San Juan	12/14/1993	3	0	03/01/1994	02/01/1997
Virgin Islands:					
92–01–I–00–STT., Cyril E King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92–01–I–00–STX., Alexander Hamilton, Christiansted St Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 94–17803 Filed 7–20–94; 8:45 am]
BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Pellston Regional Airport of Emmet County, Pellston, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pellston Regional Airport of Emmet County under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond L. Thompson, Airport Manager, of the County of Emmet, Michigan, at the following address: Pellston Regional Airport of Emmet County, U.S. 31 North, Pellston, Michigan 49769.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Emmet under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pellston Regional Airport of Emmet County under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 11, 1994, the FAA determined that the application to use the revenue from a PFC submitted by the County of Emmet was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 21, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: March 1, 1993.

Estimated charge expiration date: June 1, 1998.

Total approved net PFC revenue: $440,875.00.

Brief description of proposed project(s): Rehabilitate and groove Runway 14/32; Construct blast pads (Runway 1/32). Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxis and Charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Emmet, Michigan.

Issued in Des Plaines, Illinois, on July 14, 1994.

Benito DeLeon,

Manager, Planning/Programming Branch, Great Lakes Region.

[FR Doc. 94–17804 Filed 7–20–94; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

United States Customs Service

Public Meetings in Houston and New Orleans on Customs Automated Export System

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: This notice announces the location and dates of public meetings to be held in Houston, TX, and New Orleans, LA, on the development of the Automated Export System (AES). Dates and locations of further meetings on this subject will be scheduled and announced in a subsequent notice. These meetings are being held to (1) give Customs managers an opportunity to provide the public with information related to the development of AES and (2) give attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. A notice published by Customs in the Federal Register on June 13, 1994 (59 FR 30383) announced that the first of these meetings would be held in Washington, D.C. on July 8, 1994. Customs is now announcing that AES meetings will be held in Houston, Texas, on July 27, 1994 and in New Orleans, Louisiana, on July 28, 1994. Those planning to attend a meeting are requested to so notify Customs in the city where the meeting will be held in advance.

DATES: Houston, TX, July 27, 1994, commencing at 9:00 a.m.; New Orleans, LA, July 28, 1994, commencing at 1:30 p.m.

ADDRESSES: Houston, TX, Marriott Hotel, 18700 John F. Kennedy Boulevard, Houston, TX 77032; Conference Room: Sam Houston Room.

New Orleans, LA, July 28, 1994, commencing at 1:30 p.m.; Westin Canal Place, 100 Rue Iberville, New Orleans, LA 70130; Conference Room: Terrace Room.

FOR FURTHER INFORMATION CONTACT: Houston Meeting: Ms. Jean Bienz, (713) 233–3600; Pre-registration Fax: (713) 233–3620.

New Orleans Meeting: Ms. Veronica Saulney, (504) 589–6430; Pre-registration Fax: (504) 589–4060.

General AES questions: Lorna Finley, AES Development Team, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 7331, Washington, DC., 20229, (202) 927–0280.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** on June 13, 1994, (59 FR 30383) Customs announced its intention of developing an Automated Export System (AES) and informed the public that a series of meetings would be held around the country regarding the AES. That notice provided information on the first such meeting which was scheduled in Washington, DC. This notice is being issued to inform the public of the date and time of meetings which will be held in Houston, TX, and New Orleans, LA.

Since AES is in the very early design stage, the AES Development Team intends to hold a series of public meetings for the purpose of (1) giving Customs managers an opportunity to provide the public with information related to the development of AES and (2) giving attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. Each meeting will open with a short presentation on AES, past, present and future. After this presentation, the floor will be open to all attendees for general informal discussion of the AES program.

In this document, Customs is announcing the following public meetings on AES:

1. Houston, Texas. July 27, 1994, commencing at 9:00 a.m., Marriott Hotel, 18700 John F. Kennedy Boulevard. Houston, Texas 77032.

Conference Room: Sam Houston Room.

Point of Contact: Ms. Jean Bienz (713) 233–3600. Pre-registration Fax Number (713) 233–3620.

2. New Orleans, Louisiana. July 28, 1994, commencing at 1:30 p.m., Westin Canal Place, 100 Rue Iberville, New Orleans, Louisiana 70130.

Point of Contact: Ms. Veronica Saulney (504) 589–6430 Pre-registration Fax Number (504) 589–4060.

In order to ensure that overcrowding does not result, persons planning to attend a meeting are requested to preregister by contacting the individual identified as the contact person for the city where they plan on attending.

Additional public meetings on AES are planned for the following locations: Seattle, Washington; Los Angeles, California; and Portland, Oregon. Appropriate notice will be published in the **Federal Register** when the dates, times and specific locations for these meetings have been established.

Dated: July 18, 1994.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 94–17821 Filed 7–20–94; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on July 22, 1994, in Miami, Florida. The intended agenda is listed below.

Agenda

Friday, July 22, 1994

Part One—Closed to the Public

11:00 a.m.

1. Technical Operations Update (Mr. Pallone)
2. TV Martí Policy Update (Mr. Lobo)

Part Two—Open to the Public

1:00 p.m.

1. Approval of Minutes
2. Update on Radio Martí and TV Martí (Dr. Bonachea)
3. Programming (Mr. Lobo)

Items one and two which will be discussed from 11:00 a.m. to 1:00 p.m., will be closed to the public. Discussion of items one and two will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed Agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (202) 401–2178.

Dated: July 15, 1994.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 94–17806 Filed 7–20–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 139
Thursday, July 21, 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).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 F.R. 35409.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Tuesday, July 26, 1994.

CHANGES IN THE AGENDA: The Commodity Futures Trading Commission has added to the agenda the application on the Chicago Mercantile Exchange for designation as a contract market in the Nikkei Stock Index futures contract and options on that futures contract scheduled for 10 a.m. Tuesday, July 26, 1994.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–17870 Filed 7–19–94; 11:56 am]

BILLING CODE 6351–01–M

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 10:06 a.m. on Tuesday, July 19, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider an administrative enforcement proceeding and matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Acting Chairman Andrew C. Hove, Jr., seconded by Mr. John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), 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)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 19, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–17932 Filed 7–19–94; 3:14 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–17297.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 21, 1994, 10 a.m., Meeting Open to the Public.

THE FOLLOWING ITEMS WERE DELETED FROM THE AGENDA:

Advisory Opinion 1994–18: Edward J. Sack on behalf of the International Council of Shopping Centers (ICSC)
Advisory Opinion 1994–21: William M. Hermelin of American Pharmaceutical Association PAC
Personal Use of Campaign Funds; Request for Additional Comments

DATE AND TIME: Tuesday, July 26, 1994 at 10 a.m.

PLACE: 999 E Street, NW,, Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, July 28, 1994 at 10 a.m.

PLACE: 999 E Street, NW. Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Lenora B. Fulani for President. Repayment to the United States Treasury (LRA #451)
Advisory Opinion 1994–18: Edward J. Sack on behalf of the International Council of Shopping Centers (ICSC)
Advisory Opinion 1994–21: William M. Hermelin of American Pharmaceutical Association PAC
Advisory Opinion 1994–23: Bradley W. Hertz on behalf of the Northrup Grumman Corporation
MCFL Rulemaking: Summary of Comments and Draft Final Rules (continued from meeting of July 21, 1994)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–17910 Filed 7–19–94; 2:30 pm]

BILLING CODE 6715–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Tuesday, July 26, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Request by Keys Federal Credit Union (Florida) for a Field of Membership Expansion.
3. Federal Credit Union Loan Interest Rate Ceiling.
4. Proposed Rule: Appendix C to Part 707, NCUA's Rules and Regulations, Truth In Savings.
5. Final Rule: Part 707, NCUA's Rules and Regulations, Truth In Savings Extension of Compliance Date.
6. NCUA's Delegations of Authority.
7. NCUA's Procurement Policy.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, July 26, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Appeals under Section 701.14 and Part 747, NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–17909 Filed 7–19–94; 2:29 pm]

BILLING CODE 7535–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, August 2, 1994, in Washington, DC. The meeting is open to the public and will be held at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, August 1, 1994, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

August 2–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 11–12, 1994.

2. Remarks of the Postmaster General and CEO. (Marvin Runyon).

3. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate, Vice President).

4. Quarterly Report on Financial Performance. (Michael J. Riley, Chief Financial Officer and Senior Vice President).

5. Follow-up Report on Equal Employment Opportunity. (Charly Amos, Acting Vice President, Diversity Development).

6. Tentative Agenda for the August 29–30, 1994, meeting in St. Louis, Missouri.

David F. Harris,

Secretary.

[FR Doc. 94–17934 Filed 7–19–94; 3:47 pm]

BILLING CODE 7710–12–M

federal register

Thursday
July 21, 1994

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 583

Motor Vehicle Content Labeling; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. 92–64; Notice 05]

RIN 2127–AE63

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The American Automobile Labeling Act provides that, beginning October 1, 1994, passenger cars and other light vehicles must be labeled with information about their domestic and foreign content. The new labels will enable consumers to take country of origin information into account in deciding which new vehicle to purchase.

This final rule establishes a new regulation to implement this statute. The regulation includes requirements which apply to motor vehicle manufacturers, suppliers of passenger motor vehicle equipment, and motor vehicle dealers. For model year 1995 and model year 1996 carlines which are first offered for sale to ultimate purchasers before June 1, 1995, manufacturers and suppliers may, instead of following the detailed calculation procedures set forth in this new regulation, use procedures that they expect, in good faith, to yield similar results.

DATES: This regulation is effective August 22, 1994. Petitions for reconsideration must be received not later than August 22, 1994.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, room 5313, 400 Seventh Street SW., Washington, DC 20590 (202–366–4797).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Statutory Requirements

Congress enacted the American Automobile Labeling Act (Labeling Act) as part of the Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1993, Public Law 102–388. The Labeling Act amended Title II of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 210.

NHTSA notes that on July 5, 1994, the President signed a bill (Pub. L. 103–272) which revised and codified "without substantive change" the Cost Savings Act and two other NHTSA statutes. The content labeling provisions, which formerly existed as section 210 of the Cost Savings Act, are now codified at 49 U.S.C. 32304, Passenger motor vehicle country of origin labeling. Since this final rule was essentially completed before the new bill was signed and since the bill did not contain substantive changes, NHTSA is not revising the preamble of this final rule to delete references to section 210 and cite the new statutory sections. However, the statutory citations in the regulatory text have been updated. If the agency determines that additional conforming changes are appropriate for the regulatory text, it will make them at a later time.

Section 210 requires passenger motor vehicles[1] manufactured on or after October 1, 1994 to be labeled with information about their domestic and foreign content. The purpose of the section is to enable consumers to take country of origin information into account in deciding which vehicle to purchase.

Section 210(b) requires each new passenger motor vehicle to be labeled with the following five items of information:

(1) The percentage U.S./Canadian equipment (parts) content;

(2) The names of any countries[2] other than the U.S. and Canada which individually contribute 15 percent or more of the equipment content, and the percentage content for each such country;

(3) The final assembly point by city, state (where appropriate), and country;

(4) The country of origin of the engine; and

(5) The country of origin of the transmission.[3]

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[1] The term "passenger motor vehicle," defined in section 2(1) of the Cost Savings Act as a motor vehicle with motive power, designed for carrying 12 persons or less, is amended for purposes of section 210 to include any "multipurpose passenger vehicle" and "light duty truck" that is rated at 8,500 pounds gross vehicle weight rating or less. Thus, the new motor vehicle content labeling requirements apply to passenger cars, light trucks, multipurpose passenger vehicles, and certain small buses. Motorcycles are excluded.

[2] If there are more than two such countries, only the names of the two countries providing the greatest amount of content need be listed.

[3] As discussed elsewhere in this document, for purposes of items four and five of the label, engine and transmission country of origin determinations exclude assembly costs. Therefore, these items can also be referred to as the country of origin of an

Section 210(b) specifies that the first two items of information, the equipment content percentages for the U.S./Canada and foreign countries, are calculated on a "carline" basis rather than for each individual vehicle. The term "carline" refers to a name of a group of vehicles which has a degree of commonality in construction, e.g., body, chassis.

Manufacturers of passenger motor vehicles are required to establish the required information annually for each model year, and are responsible for the affixing of the required label to the vehicle. Dealers are responsible for maintaining the labels.

In order to calculate the information required for the label, the vehicle manufacturer must know certain information about the origin of each item of passenger motor vehicle equipment used to assemble its vehicles. For example, in order to calculate the information for the first item of the label, i.e., the percentage of the value of the motor vehicle equipment installed on passenger motor vehicles within a carline which originated in the U.S./Canada, the manufacturer must know the U.S./Canadian content of each item of motor vehicle equipment.

The statute specifies that suppliers of passenger motor vehicle equipment must provide information about the origin of the equipment they supply. For purposes of determining U.S./Canadian origin for the first item on the label, the statute provides different procedures depending on whether equipment is received from an allied supplier (a supplier wholly owned by the manufacturer) or an outside supplier.

For equipment received from outside suppliers, section 210(f)(5)(A) provides that the equipment is considered U.S./Canadian if it contains at least 70 percent value added in the U.S./Canada. Thus, any equipment that is at least 70 percent U.S./Canadian is valued at 100 percent U.S./Canadian, and any equipment under 70 percent is valued at zero percent. This statutory provision is sometimes referred to as the "roll-up, roll-down" provision. For equipment received from allied suppliers, section 210(f)(5)(B) provides that the actual amount of U.S./Canadian content is used.

The statute requires the Department of Transportation to promulgate regulations implementing the content labeling requirements. Section 210(c) requires the promulgation of regulations which specify the form and content of the required labels, and the manner and location in which the labels must be affixed. Section 210(d) requires promulgation of such regulations as may be necessary to carry out the labeling requirements, including regulations to establish a procedure to verify the required labeling information. That section also directs that such regulations provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers. Finally, section 210(d) also specifies that the regulations include provisions requiring suppliers to certify whether their equipment is of U.S., U.S./Canadian, or foreign origin.

Section 210 does not specify a specific date for completing the rulemaking. However, section 210(d) does direct that the regulations be promulgated in time to provide adequate compliance leadtime before content labeling becomes mandatory on October 1, 1994.

B. Request for Comments and Public Meeting

On November 18, 1992, NHTSA published in the **Federal Register** (57 FR 54351) a request for comments in order to obtain information which would be of assistance in developing a proposal to implement section 210. To add an additional dimension to the effort to obtain public input, a public meeting was held on December 17, 1992, during which the agency heard nine speakers. More than 20 written comments were subsequently received by the agency, including comments from vehicle manufacturers, and manufacturer and dealer groups.

C. Notice of Proposed Rulemaking

On November 19, 1993, NHTSA published in the **Federal Register** (57 FR 61042) a notice of proposed rulemaking (NPRM) for a new regulation to implement section 210. The NPRM reflected the agency's consideration of the matters raised in the oral and written comments received in response to the request for comments, as well as many other issues. In developing the proposed regulation, the agency necessarily followed the language of section 210 as closely as possible. NHTSA noted in the NPRM that, given the high level of detail set forth in the statute, the agency has little discretion with respect to many aspects of the calculation and labeling scheme. A summary of the proposed regulation follows.

Under the proposed regulation, vehicle manufacturers would be required to affix to all new passenger motor vehicles a label which provides the five items of content information specified by section 210. The agency proposed to require specific language for the label. The NPRM included a sample label, consistent with the proposed requirements, which read as follows:

PARTS CONTENT INFORMATION

For vehicles in this carline:
U.S./Canadian Parts Content: 50%
Major Sources of Foreign Parts Content:
Japan: 20%
Mexico: 15%

For this vehicle:
Final Assembly Point: Flint, Michigan, USA
Country of Origin:
Engine: U.S.
Transmission: Canada

Note: The PARTS CONTENT of a typical vehicle makes up about (a range was to be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

NHTSA proposed to specify the heading "PARTS CONTENT INFORMATION" to draw the attention of consumers to the content information, and indicate the subject of the information. The purpose of the proposed sub-headings "For vehicles in this carline" and "For this vehicle" was to advise consumers which items of information relate to the carline as a whole and which relate to the individual vehicle. The purpose of the proposed explanatory note at the bottom of the label was to inform consumers about the percentage of a typical vehicle's wholesale cost to the dealer that is attributable to parts content, thereby helping consumers avoid confusing the parts content information specified on the label with overall vehicle value (which would include other factors such as final assembly labor).

In order to ensure that vehicle manufacturers have the information necessary to calculate the information for the content labels, NHTSA proposed to require each supplier of passenger motor vehicle equipment to provide specified information about the content of the equipment it supplies. Under the proposal, the information was to be provided directly to the party receiving the equipment, i.e., either a vehicle manufacturer or an allied supplier, in the form of a certification. The agency proposed specific provisions concerning

engine's or transmission's "parts." This preamble refers to these items in both manners, i.e., country of origin for the engine (or transmission) and country of origin for the engine (or transmission) parts.

when the information was to be provided.

NHTSA also proposed specific procedures for manufacturers and suppliers to follow in calculating values for the label. One issue of particular note was which costs are to be regarded as costs incurred at the final assembly point and beyond, including the costs of assembly and labor. Section 210 provides that these costs are not to be included in the calculation of parts content. NHTSA noted that manufacturers may conduct some pre-assembly operations, e.g., production of equipment, at the same location as final assembly. The agency tentatively concluded that such operations should be treated in the same fashion as the operations of an allied supplier. The agency proposed to specify a particular phase in the assembly process, for both the body and chassis, that would mark the beginning of final assembly.

Another significant issue which NHTSA addressed in the NPRM was whether "carline" should encompass different countries of assembly. At present, there are a number of vehicle models that include some vehicles assembled in the U.S./Canada and other vehicles assembled in other countries. The agency tentatively concluded that country of final assembly should not be considered in making carline determinations, since section 210 specifies that carline determinations are to be made based on degree of commonality in construction. NHTSA recognized, however, that additional subdivision of carlines by country of assembly would result in labeling information that is more representative of the individually labeled vehicles. The agency requested comments on requiring additional labeling information for carlines assembled in more than one country.

NHTSA also addressed the issue of whether any limited exclusions should be provided from section 210's labeling requirements. The agency stated that it was considering whether manufacturers of vehicles with low U.S./Canadian content should be permitted to identify the amount of such content as "minimal" instead of being required to calculate a specific percentage. The agency also indicated that it was considering excluding multi-stage and low volume manufacturers from the requirement to provide the first two items of information on the label, i.e., the two items which must be calculated on a carline basis. NHTSA stated that, as part of considering whether any limited exclusions should be provided, the agency was in the process of evaluating its authority to provide such exclusions.

NHTSA also proposed to require manufacturers to report certain content information to the agency, and to require manufacturers and suppliers to maintain records of the information underlying the information provided on the content label. The agency proposed to require dealers to maintain the content label on each vehicle until the vehicle is sold to a consumer.

II. Summary of Comments

The agency received about 80 comments on the NPRM, including ones from vehicle manufacturers, suppliers, automotive trade associations, and private citizens. A brief, representative summary of the major comments follows. A more specific discussion of representative comments, and the agency's responses, are set forth later in this preamble.

The American Automobile Manufacturers Association (AAMA), representing General Motors (GM), Ford and Chrysler, expressed concern about the timing of the final regulation. That organization stated that the proposed regulation will require extensive data collection and calculation requirements, and that there are several areas of uncertainty that will not be resolved until a final rule is issued. AAMA stated that it has been working in conjunction with the Automotive Industry Action Group (AIAG) and a number of suppliers to establish processes to comply with the law, but has been unable to complete this activity because of uncertainties about the final rule. AAMA stated that manufacturers and suppliers will not be able to comply with all the data collection and calculation requirements by the October 1994 implementation date. It requested NHTSA to allow manufacturers and suppliers to use procedures that are expected to yield similar results for at least 12 months after the final rule is published.

In addition to expressing its concern about timing, AAMA urged the agency to make numerous changes in the proposed regulation. On the subject of the wording of the label, that organization objected to describing the first item of information as "U.S./Canadian Parts Content." AAMA argued that the statute specifies use of the term "U.S./Canadian Content," and that the inclusion of the word "parts" is contrary to the statute. That commenter also recommended against including an explanatory note concerning the percentage of a typical vehicle's wholesale cost to the dealer that is attributable to parts content. AAMA stated that such a note would be confusing to the consumer and could be misleading because of the broad range of ratios that exist for vehicles.

AAMA also recommended a number of changes with respect to the proposed procedures for calculating the information on the label. One of the recommendations concerned which operations should be considered part of final assembly. That organization stated that under NHTSA's proposal, the painted body and chassis would be considered a substrate to which passenger motor vehicle equipment is attached to produce a finished vehicle. AAMA stated that this approach is contrary to the generally accepted definition of the passenger motor vehicle equipment assembly process. That organization agreed, however, that the production of certain equipment at the final assembly point should not be considered part of final assembly but should instead be included in the valuation of the motor vehicle equipment and content calculations. AAMA recommended that the agency define "final assembly" to include all operations involved in the assembly of the vehicle performed at the final assembly point, including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes.

AAMA also recommended numerous other changes related to such things as how the value of passenger motor vehicle equipment is determined, how the engine and transmission countries of origin are determined, the responsibilities of suppliers, how values in the currency of one country should be converted into values in the currency of another country, the time when the label must be attached to the vehicle, and what requirements are appropriate with respect to maintenance of records and reporting content information to the agency. On the subject of supplier requirements, AAMA stated that the proposal would require that suppliers report on all parts supplied to a manufacturer or allied supplier regardless of value of the item of equipment or the country of manufacture. That organization recommended that the reporting requirement be limited to providing content data on those items of equipment for which such data was requested by the manufacturer.

On the subject of how vehicle models that are assembled in both the U.S./Canada and other countries should be treated, AAMA stated that the statute contains a sufficient definition of "carline" and that additional information should not be provided on the label to indicate that a carline is produced in more than one country. That organization stated that separate content calculations, one set for each assembly country and the entire carline, would cause unnecessary burdens and confuse the consumer.

On the subject of possible exclusions, AAMA supported a limited exclusion for vehicles with low U.S./Canadian parts content, albeit at a lower content level from that discussed in the NPRM. AAMA also stated that since the agency "has implied" that it has the authority to set a minimal level for the U.S. and Canadian content which removes a recordkeeping burden on the low end of content, it urged that such relief also be provided for the high end of content. That organization recommended that, for carlines with more than 85 percent U.S./Canadian content, manufacturers be permitted to specify the content as "at least" 85 percent instead of stating a specific percentage.

GM, Ford and Chrysler also each submitted individual comments. To a large extent, these comments reiterated arguments made by AAMA. An additional argument made by GM concerned the calculation methodology for determining the percentage U.S./Canadian content for a carline. GM stated that the agency had proposed that the proper method to establish the U.S./Canadian content for a carline would be to reasonably project the installation rates for all equipment options and choice offered on that carline; multiply those rates by the U.S./Canadian content value for each option or choice, and divide the result by the total value for all equipment, domestic or foreign. That company stated that it has found for cost management and planning purposes that the use of a high volume configuration carline model results in better management control of the assembly process than the so-called average equipped carline model. GM stated that such a model has found wide acceptance in calculations made for corporate average fuel economy (CAFE) emission testing configurations and most recently for vehicle configurations under NAFTA. That company recommended that the agency permit manufacturers to use established carline cost management models for establishing the percentage U.S./Canadian content required to be included in the AALA domestic content label.

Foreign vehicle manufacturers also recommended numerous changes in the proposed requirements, but often from a very different perspective from that of the domestic vehicle manufacturers. For example, while the domestic manufacturers urged a change in the proposed definition of "final assembly" so that it is considered to begin earlier in the vehicle manufacturing process, the foreign manufacturers generally urged changes in the definition so that it is considered to begin later in the vehicle manufacturing process.

The Association of International Automobile Manufacturers (AIAM) and Toyota stated that the point of final assembly should be considered to be no sooner than the point at which the engine and vehicle body are fastened together. AIAM argued that the Labeling Act defines "final assembly" as the time when "all component parts necessary to the mechanical operation of such automobile are included," and stated that the proposed definition would defy the stated intent of the Act and defy all conventional wisdom with respect to the automotive manufacturing process. Nissan stated that an appropriate point to be identified as the beginning of final assembly is the moment in the production process just before the attachment of the engine and drive train to the chassis. Mitsubishi stated that the point where final assembly begins should be defined as the point at which the engine and body are fastened. According to that company, this would be more consistent with the agency's proposed definition of "final assembly point", where all components and parts necessary to the mechanical operation of such automobile are included.

BMW commented that NHTSA's proposal defined "final assembly" with regard to the body as the point at which the body leaves the paint shop. That company stated that this portion of the definition is very precise and that the costs associated with it will likely be similar between manufacturers regardless of painting process or vehicle design. BMW commented, however, with regard to definition of final assembly of the chassis, that it believes a manufacturer would be able to tailor the assembly process to take advantage of the definition and alter its carline's part content percentages. That company stated that this portion of the definition employs the point at which the engine and transmission are placed on the chassis frame or on the assembly cradle. According to BMW, because this point can be varied, a manufacturer would have the opportunity to install or not install equipment such as the brake system including ABS, wheels and tires, and interior components and trim. BMW commented that a manufacturer could choose to install the engine last, essentially including all labor and overhead in its parts content calculations. BMW recommended that the agency investigate assembly processes and include a more definitive point to stop including costs associated with the chassis assembly.

The foreign vehicle manufacturers also generally had very different views than the domestic manufacturers with respect to the treatment of vehicle models including some vehicles assembled in the U.S./Canada and other vehicles assembled in other countries. AIAM stated that failing to allow manufacturers to distinguish between countries of production within a particular carline directly contradicts the Act's stated purpose of providing consumers with the best and most understandable information possible. That organization stated that it believes that NHTSA has the authority to adopt a country of production split for determining the parts content percentages for carlines, in order to follow the stated intent of the Act. According to AIAM, without carline subdivision, the information presented to the consumer will be at best misleading, and at worst totally inaccurate.

The Japan Automobile Manufacturers Association (JAMA) urged that separate calculations for carlines manufactured in more than one country at least be permitted. That organization stated that the failure to specify such percentages separately would result in an overstated domestic content on imported vehicles and an understated one on domestically produced vehicles. According to JAMA, the U.S. consumer cannot possibly be served by such misleading information.

While numerous foreign vehicle manufacturers objected to the agency's proposal to exclude country of assembly as a factor to consider in making carline determinations, several indicated that, if NHTSA did not change that position, they supported the concept of providing additional information on the label concerning such vehicles. Honda, for example, stated that such additional information would improve the accuracy of the information provided to the consumer.

The foreign vehicle manufacturers differed among themselves on the question of whether an explanatory note should be provided concerning the percentage of a typical vehicle's wholesale cost to the dealer that is attributable to parts content. AIAM, for

example, stated that such additional information would only serve to confuse the consumer, and that a single percentage range to be used by all manufacturers cannot adequately illustrate the many variations involved in the manufacture and distribution of motor vehicles. JAMA, however, argued that it is vital to consumer understanding to clarify the fact that the label calculation does not include vehicle final assembly labor.

The foreign vehicle manufacturers strongly supported a limited exclusion for vehicles with low U.S./Canadian parts content. However, several of them argued that unless the agency also permits a limited exclusion from providing the information required for item two of the label, i.e., the percentage parts content originating from major sources of foreign content, there would be only a minimal benefit from an exclusion from specifying the percentage U.S./Canadian parts content. This is because the foreign manufacturers would have to collect detailed information from most of their suppliers to calculate the information for item two of the label. The foreign manufacturers suggested various alternative approaches, such as requiring them to specify the countries that constitute major sources of foreign content but not the percentages from such countries.

Like the domestic vehicle manufacturers, the foreign manufacturers recommended numerous other changes in the proposed regulation, relating to such things as how the value of passenger motor vehicle equipment is determined, how the engine and transmission countries of origin are determined, the responsibilities of suppliers, how currencies should be converted, the time when the label must be attached to the vehicle, and what requirements are appropriate with respect to maintenance of records and reporting content information to the agency.

NHTSA received comments from several suppliers and one supplier trade association, the Automotive Parts Manufacturers' Association (APMA). That association stated that if the agency does not adopt the AIAG model of content calculation, the regulation should specifically state how outside suppliers should calculate U.S./Canadian content. APMA stated that the proposed rule relies on the definitions of "value added" and "foreign content" in the statute, but that neither the statute nor the regulation give specific regulatory direction concerning how outside suppliers are to calculate "value added in the U.S./Canada."

The agency also received comments from two dealer associations, the National Automobile Dealers Association (NADA) and the American International Automobile Dealers Association (AIADA). These organizations submitted comments which focused on dealer responsibilities and other issues of concern to dealers.

NHTSA also received comments from final stage manufacturers and the National Truck Equipment Association (NTEA), a trade association representing distributors and manufacturers of multi-stage produced work-related trucks, truck bodies and equipment. These comments focused on issues of concern to final stage manufacturers.

III. Overview of Final Rule

Today's final rule establishes a new regulation, 49 CFR Part 583, Automobile Parts Content Labeling, to implement section 210 of the Cost Savings Act. The regulation establishes requirements for (1) Manufacturers of passenger motor vehicles; (2) suppliers of motor vehicle equipment used in the assembly of passenger motor vehicles; and (3) dealers of passenger motor vehicles. A summary of the requirements is set forth below.

A. Manufacturers of Passenger Motor Vehicles

Beginning on October 1, 1994, vehicle manufacturers are required to affix to all new passenger motor vehicles (this category includes passenger cars, certain small buses, and all trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less) a label which provides the following information:

(1) *U.S./Canadian Parts Content*—the overall percentage, by value, U.S./Canadian content of the motor vehicle equipment installed on the carline of which the vehicle is a part;

(2) *Major Sources of Foreign Parts Content*—the names of the two countries, if any, other than the U.S./Canada, which contributed the greatest amount (at least 15 percent), by value, of motor vehicle equipment for the carline, and the percentage, by value, of the equipment originating in each such country;

(3) *Final Assembly Point*—the city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) *Country of Origin for the Engine Parts;*

(5) *Country of Origin for the Transmission Parts.*

The label is also required to include a statement below this information reading as follows:

Note: Parts content does not include final assembly, distribution, or other non-parts costs.

Manufacturers are permitted, but not required, to provide at the end of the note the following additional statement for carlines assembled in the U.S. and/or Canada, and another country:

This carline is assembled in the U.S. and/or Canada, and in [insert name of each other country]. The U.S./Canadian parts content for the portion of the carline assembled in [insert name of country, treating the U.S. and Canada together, i.e., U.S./Canada] is [____]%

The information for items (1) and (2) of the label is calculated, prior to the beginning of the model year, for each carline. The information for items (3), (4) and (5) is determined for each individual vehicle. However, the country of origin for groups of engines and transmissions is determined once a model year.

Vehicle manufacturers are to calculate the information for the label by using information provided to them by suppliers. Under the final rule, manufacturers and allied suppliers are required to request their suppliers to provide the relevant content information specified in Part 583, and the suppliers are required to provide the specified information in response to such requests. The vehicle manufacturers are required to maintain records of the information used to determine the information provided on the labels.

B. Suppliers of Motor Vehicle Equipment

For any equipment that an outside supplier (a supplier not wholly owned by the vehicle manufacturer) supplies to a vehicle manufacturer or to a supplier wholly owned by the vehicle manufacturer (an allied supplier), the outside supplier is required to provide, at the request of that manufacturer or allied supplier, the following information:

(1) The price of the equipment to the manufacturer or allied supplier;

(2) Whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) For any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin of the equipment (treating the U.S. and Canada together);

(4) For equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

For any equipment that an allied supplier supplies to a vehicle manufacturer, the supplier is required to

provide, at the request of the manufacturer, the following information:

(1) The price of the equipment to the manufacturer;

(2) The percentage U.S./Canadian content of the equipment;

(3) The country of origin of the equipment (treating the U.S. and Canada together);

(4) For equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

A supplier of engines and transmissions is, in addition to the above requirements, required to provide, at the request of the vehicle manufacturer, the country of origin for each engine or transmission it supplies to the manufacturer, determined as follows: The country in which the greatest percentage, by value (using the total cost of *equipment* to the engine or transmission supplier, while excluding the cost of final assembly labor), was added to the engine or transmission.

Both outside and allied suppliers that directly supply equipment to vehicle manufacturers are required to provide the specified information directly to the vehicle manufacturers, in the form of a certification. Outside suppliers that directly supply to allied suppliers are required to provide the specified information and certification directly to the allied suppliers. Suppliers are also required to maintain records of the information used to compile the information provided to the manufacturers and outside suppliers.

The requirements apply only to suppliers which supply directly to the vehicle manufacturer or to an allied supplier. No requirements are imposed on suppliers earlier in the chain, *e.g.*, a company which supplies an item of equipment to an outside supplier which then supplies it to a vehicle manufacturer.

C. Dealers of Passenger Motor Vehicles

Dealers are required to maintain the label on each vehicle until the vehicle is sold to a consumer.

D. First Year Requirements

For model year 1995 vehicles and model year 1996 vehicles which are offered for sale to ultimate purchasers before June 1, 1995, manufacturers and suppliers may, instead of following the detailed calculation procedures set forth in this new regulation, use procedures that they expect, in good faith, to yield similar results.

IV. Agency Rationale and Response to Comments

A. Major Issues Concerning Information on the Label

In this section of the preamble, NHTSA presents its analysis of the major issues and comments concerning the information on the label, including, but not limited to, ones relating to what information is provided on the label and the wording of the label, how manufacturers must calculate the specified information, and how suppliers are to make the necessary determinations concerning the origin of the equipment they supply.

For ease of comparison with the proposed regulation, the discussion of issues is generally organized according to the sections of the proposed regulation to which they relate. The agency notes that in some cases the cited sections are relevant not only to the major issues concerning the information on the label, but also to other issues. The other issues are discussed elsewhere in the preamble.

1. Definitions (Section 583.4)

The definitions section prescribes the meaning of terms and concepts which are used throughout the content labeling regulation. As discussed below, some of the terms and concepts have a significant effect on the information to be provided on the label, and some of the proposed definitions were controversial with many commenters.

a. Carline. Section 210(b) specifies that U.S./Canadian parts content and major sources of foreign parts content (items one and two on the label) are determined on a "carline" basis, instead of for each individual vehicle. Section 210(f) defines *carline* as meaning a name denoting a group of vehicles which has a degree of commonality in construction (e.g., body, chassis), and not considering any level of decor or opulence and not generally distinguished by such characteristics as roof line, number of doors, seats, or windows, except for light duty trucks. That section also provides that light duty trucks are considered to be different carlines than passenger cars.

NHTSA addressed a number of issues in the NPRM concerning whether the meaning of *carline* should be further clarified by regulation. One significant issue was whether *carline* should encompass vehicles assembled in different countries. At present, there are a number of vehicle models that are assembled in the U.S. and/or Canada and in other countries. The agency tentatively concluded that country of final assembly should not be considered in making carline determinations, since section 210 specifies that carline determinations are to be made based on degree of commonality in construction.

The agency noted that determining carlines on the basis of country of assembly appears inconsistent with this statutory definition since *identical* cars, *i.e.*, ones with total commonality in construction, could be placed in different carlines. NHTSA also noted that such a result might result in consumer confusion. For example, if a consumer ordered a car identical to one for which he or she had taken a test drive, the consumer would find it very odd if the car he or she received had a label indicating that it was in a different carline.

NHTSA recognized, however, that additional subdivision of carlines by country of manufacture would result in content labeling information that is more representative of the individually labeled vehicles. The agency requested comments on a possible requirement for manufacturers to include additional information on the label for carlines assembled in more than one country, such as a statement of the U.S./Canadian parts content and major foreign sources of that portion of the carline produced in a given country.

NHTSA also requested comments on the possibility of differentiating carlines by engine type, whether light trucks should be separated into different carlines depending on whether they are 2-wheel drive or 4-wheel drive, and on whether any other distinctions should be specified for making carline determinations.

NHTSA received numerous comments concerning the definition of carline. In the discussion which follows, the agency will first address comments concerning the issue of whether "carline" should encompass vehicles assembled in different countries, and the related issue of a possible requirement for manufacturers to include additional information on the label for carlines assembled in more than one country. The agency will then discuss other issues related to the definition of carline.

Carline and different countries of assembly. AAMA supported NHTSA's tentative conclusion that carline is not distinguished by country of final assembly. That organization noted that the statutory definition is similar to the definition used in other Federal regulations and is also used in industry to establish carlines. AAMA argued that to maintain consistency among Federal regulations and to minimize the administrative burden, the definitions and interpretation of carline used for the

Labeling Act should be the same as those used for CAFE.

AAMA also commented that it disagrees with including additional information on the label for carlines that are assembled in more than one country. That organization argued that separate content carline calculations, one set for each assembly country and the entire carline, would cause unnecessary burden and confuse consumers. According to AAMA, this method would create the same or more confusion than allowing manufacturers to separate carlines based on country of assembly. That organization also commented that vehicles produced in both the U.S. and Canada would have similar content values, and listing information twice would cause confusion.

While the United Auto Workers (UAW) did not submit a comment on the NPRM, it made the following argument in response to the agency's 1992 request for comments:

> (I)n doing the model line calculations, imported vehicles must be combined with vehicles produced in the United States. The automakers do not have the option of splitting the two groups of vehicles. The definition of "carline" in the new statute is based on the definition under the CAFE program. Since those standards do not permit foreign and domestic versions of the same carline to be split, this should not be allowed under the vehicle content labeling statute.

AIAM commented that failing to allow manufacturers to distinguish between countries of production within a particular carline directly contradicts the Act's stated purpose of providing consumers with the best and most understandable information possible. That organization stated that it believes that NHTSA has the authority to adopt a country-of-production split for determining the parts content percentages for carlines, in order to follow this stated intent of the Act. According to AIAM, without carline subdivision, the information presented to the consumer will be at best misleading, and at worst totally inaccurate.

JAMA urged that separate calculations for carlines manufactured in more than one country at least be permitted. That organization stated that the failure to specify such percentages separately would result in an overstated domestic content on imported vehicles and an understated one on domestically produced vehicles. According to JAMA, the U.S. consumer cannot possibly be served by such misleading information.

Toyota stated that it believes the agency's tentative conclusion that country of assembly should not be considered in making carline determinations is incorrect as a matter of statutory construction and Congressional intent. It argued that the statute does not compel NHTSA to require averaging of equipment content information on a worldwide basis for a particular carline.

Toyota stated that since section 210(b)(1)(A) requires disclosure of the percentage of U.S./Canadian-origin equipment "installed on *such* vehicle *within* a carline," the Labeling Act contemplates that the percentage disclosed will have a relationship to both the individual vehicle and the carline to which it belongs. (Emphasis in Toyota's comment.) That company recognized that section 210(b)(2) requires the calculation of the percentage to made "for such carline," but argued that it is incorrect to read section 210(b)(2) out of context and "in disregard of the requirement imposed by the literal language of section 210(b)(1)(A)." Toyota argued that a model carline percentage that fails to approximate the level of content on the particular vehicle would not satisfy this requirement.

Toyota also argued that the lack of a reference in the statutory definition of *carline* to the country or countries where a carline is assembled indicates that the agency may exercise a level of discretion in determining how the (b)(1)(A) calculation is to be performed with respect to carlines manufactured in multiple countries. That company stated that NHTSA's exercise of that discretion should be guided by section 210(d)'s requirement that the ultimate purchaser should be provided "the best and most understandable information possible." Toyota argued that consumers reading the label will expect the equipment content percentages disclosed on the label to apply to a class of vehicles of which the particular vehicle being observed is representative. That company argued that any such disclosure that attempts to average, for example, vehicles manufactured in the United States or Canada with vehicles manufactured in Japan cannot possibly provide the consumer with meaningful information because of dissimilarity with respect to the sourcing of equipment.

Toyota also argued that it believes the treatment of carline under CAFE regulations is irrelevant to the issue of whether Labeling Act equipment content reporting must be averaged for a carline produced in more than one country. That company argued that the two statutes have completely different purposes. Toyota stated that it may be appropriate under CAFE to average fuel economy data, because fuel economy of a carline is determined by vehicle design, an element that vehicles in a carline have in common regardless of where they are produced. That commenter stated that the opposite is the case for sourcing patterns, which typically differ greatly by country of manufacture.

Honda argued that the agency's tentative decision to combine "dual nationality" nameplates into a single carline is fundamentally inconsistent with the stated goal of the sponsor of the legislation—providing consumers sufficient information to "buy American" if they so choose. That company argued that, under the agency's proposal, the domestic content of the equipment on U.S./Canadian built "dual nationality" vehicles will be understated, while the domestic content of the equipment on their foreign-built twins will be overstated.

Honda stated that there is no reason to read the law to require such a result that it believes would frustrate the fundamental purpose of the Labeling Act. It noted the agency's stated concern that determining carlines based on country of origin would permit identical cars to be placed in different carlines, and argued that this result will occur under the agency's proposal. That company cited the Ford Taurus and Mercury Sable as an example. Honda also cited NHTSA's stated concern that consumers might be confused if they took delivery of a vehicle with a label indicating a different "carline" than the vehicle they test drove. That company stated that this potential for confusion is not greater than that which might arise if the delivered vehicle shows a different final assembly point or country of origin of the engine or transmission than those on the label of the test driven model.

BMW also disagreed with the agency's tentative conclusion that country of assembly should not be considered in making carline determinations. First, that company argued that the Labeling Act does not prohibit division of vehicles by country. That company stated that given the fact that Congress defined *carline* as a "name," which is generally assigned by a manufacturer, it believes Congress intended carlines to be established by manufacturers. BMW stated that it believes Congress was attempting to alleviate the burden on manufacturers by giving them the maximum flexibility to group vehicles together, while not allowing completely unrelated vehicles to be incorporated into one set of parts content calculations.

BMW argued that Congress placed the restriction of having "commonality in construction" to define the largest grouping by which a manufacturer is allowed to divide its vehicles. According to that company, this portion of the definition was not intended to force manufacturers to group vehicles together but rather to limit the vehicles that could be forced together into a carline. BMW stated that if the Congress had intended to force such a grouping on manufacturers, it would have explicitly defined *carline* as a "name denoting a group that shall include *all* vehicles which have a degree of commonality in construction." (Emphasis in BMW's comment.)

Second, BMW argued that information based on a vehicle's country of origin would be the most accurate and understandable to the consumer. That company noted the agency's statement in the NPRM that consumers might be confused if identical vehicles are considered to be in different carlines. BMW argued that this should not be a concern because such differences would provide better and more accurate information.

Finally, BMW argued that NHTSA's tentative conclusion directly conflicts with the portion of section 210 that requires the best and most understandable information. That company argued that the latter requirement should take precedence. BMW recommended that, rather than debating such issues as the Congressional intent of the carline definition, the agency should use the definition as worded in the legislation and permit manufacturers to make independent interpretations to achieve this goal.

While numerous foreign vehicle manufacturers, including ones in addition to those mentioned above, objected to the agency's proposal to exclude country of assembly as a factor to consider in making carline determinations, several indicated that, if NHTSA did not change that position, they supported the concept of providing additional information on the label concerning such vehicles. Toyota stated that requiring this additional information (or alternatively, allowing a manufacturer to include it on the label on its own option) is preferable to requiring (or permitting) only disclosure of an average percentage for a carline on a worldwide basis.

Honda stated that such additional information would improve the accuracy of the information provided to the consumer. It suggested the following language:

> This carline is produced in both the United States [or Canada, as appropriate] and [add name of other country]. The U.S./Canadian parts content for vehicles manufactured in the location noted in line three of this label is [____]%.

Nissan stated that if manufacturers are not permitted to separate parts content percentage calculation by production country origin, then each manufacturer should be permitted the option to determine the most appropriate method to provide additional information or explanation of a label's parts content percentages to a potential vehicle purchaser. That company argued that NHTSA should not prohibit the manufacturer from providing additional explanations or require the manufacturer to include generic wording to clarify the U.S./Canadian parts content percentage calculation to consumers.

After carefully considering all of the comments, NHTSA has decided that carline determinations may not be based on country of assembly, but manufacturers should be permitted to provide specified additional information for carlines assembled in both the U.S./Canada and another country. In reaching this decision, the agency has focused both on the Labeling Act's provisions related to "carline" and on section 210(d)'s requirement that regulations "provide to the ultimate purchaser the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers."

In enacting the Labeling Act, Congress decided that the parts content percentages for the U.S./Canada and foreign countries should be calculated for groups of vehicles rather than for each individual vehicle. It also decided to adopt the concept of "carline" and its definition from the CAFE program, as the basis for determining the relevant groups of vehicles.

Section 210 expressly states that carline determinations are to be made based on degree of commonality in construction. Basing carline determinations on country of assembly would be a very different method for making carline determinations, and one that is inconsistent with the method specified in the statute.

Moreover, NHTSA disagrees with those commenters which argued that carline determinations which exclude considerations of country of assembly are inconsistent with the purpose of the Labeling Act. First, the concept of "carline" is well understood by Congress, given its use in the CAFE program. Since Congress decided to use this well-known concept as the basis for making vehicle groupings under the Labeling Act, it is reasonable to assume that the concept is consistent with the purpose of Congress. The agency observes that while many foreign vehicle manufacturers argued that basing carline determinations solely on commonality of construction is inconsistent with the purpose of Congress, this view was not shared by GM, Ford, Chrysler, or the UAW.

The agency specifically rejects Toyota's argument that the treatment of carline under CAFE is irrelevant to Labeling Act issues. Since Congress decided to adopt the same concept and definition for grouping vehicles as used in CAFE, the treatment under CAFE is highly relevant. The agency notes that Toyota's objection and the objections of many of the foreign vehicle manufacturers are ultimately with the statute rather than the agency's proposed regulations. Toyota suggests that "(i)t may be appropriate under CAFE to average fuel economy data, because fuel economy of a carline is determined by vehicle design," but argues that "(t)he opposite is the case for sourcing patterns, which typically differ greatly by country of manufacture." However, the Labeling Act expressly requires carline determinations to be determined based on "commonality of construction," i.e., vehicle design.

Second, the mere fact that the exclusion of country of assembly from carline determinations can result in overstated domestic content on imported vehicles and an understated one on domestically produced vehicles does not mean that the results are misleading. Any approach in which U.S./Canadian parts content is determined based on groups of vehicles will result in situations where the content is overstated or understated for individual vehicles within the group. However, prospective purchasers will know the U.S./Canadian parts content for the group as a whole.

For example, if a particular make/model is assembled in both the U.S./Canada and another country, consumers will know the average U.S./Canadian content for that make/model. The agency believes that this is relevant information for consumers which wish to buy a vehicle made in the U.S. or Canada. Moreover, the carline information is not the only information that Congress decided to require on the label. Consumers will also know where the individual vehicle is assembled, and

the countries of origin of the engine and transmission for that individual vehicle.

NHTSA disagrees with several of the statutory arguments made by commenters favoring determination of carlines based on country of assembly. As discussed above, Toyota argued that section 210(b)(1)(A)'s requirement that the label indicate the percentage U.S./Canadian equipment "installed on such vehicle within a carline" amounts to a requirement that the carline percentage must "approximate the level of content" on each individual vehicle. However, the quoted language of section 210(b)(1)(A) simply means that the percentage to be provided on the label is for the carline of which the individual vehicle is a part, as is made clear by section 210(b). There is no basis to read section 210(b)(1)(A) as requiring the percentage to apply to *both* the individual vehicle and the carline. If content is determined for a group of vehicles, it necessarily follows that the content of each individual vehicle may vary from that of the group as a whole.

The agency also disagrees with BMW's argument that the statutory definition of carline is merely intended to define the largest grouping by which a manufacturer is permitted to divide its vehicles but not preclude further divisions in making carline determinations. NHTSA notes that in addition to specifying "commonality in construction" as the basis for making carline determinations, the section 210 definition provides that even some attributes that are part of "commonality in construction," e.g., level of decor, are not to be considered in making carline determinations. Moreover, manufacturers are not permitted to make unlimited divisions for purposes of CAFE.

NHTSA also disagrees with BMW's suggestion that the agency should essentially permit manufacturers to interpret the term "carline" in any way they choose. In addition to being concerned that the implementing regulations ensure results that are consistent with the statutory requirements, NHTSA also believes it is important that consumers be provided with information that is consistent among manufacturers. It would be very confusing to consumers if they were provided with content information determined on a carline basis by each manufacturer, but the meaning of "carline" varied substantially among manufacturers.

While NHTSA has concluded, for the reasons stated above, that carline determinations may not be based on country of assembly, it recognizes that additional subdivision of carlines by country of manufacture would result in content labeling information that is more representative of the individually labeled vehicles. NHTSA does not believe it would be appropriate to permit unlimited additional information to be provided on the label, since such additional information could result in an "overload" to consumers and dilute the impact of the required information. However, given the potential significance of the impact that assembly of a carline in both the U.S./Canada and other countries may have on the representativeness of the carline information provided on the label, NHTSA has decided to *permit*, but not require, the following additional statement to be provided on the label:

> This carline is assembled in the U.S. and/or Canada, and in [insert name of each other country]. The U.S./Canadian parts content for the portion of the carline assembled in [insert name of country, treating the U.S. and Canada together, i.e., U.S./Canada] is [____]%.

The agency is specifying specific language for the optional information to ensure that it is both brief and easily understood, as well as to maintain consistency among manufacturers. If a manufacturer chooses to provide this optional information, the information must be provided at the end of the label, as part of the explanatory note. Moreover, if the additional information is provided for some vehicles within a carline, it must be provided for all vehicles within the carline. Otherwise, a manufacturer might provide the additional information only for the portion of the carline which has higher U.S./Canadian parts content.

NHTSA believes that permitting but not requiring manufacturers to provide this additional information is appropriate in light of the statutory requirement that the implementing regulation "provide to the ultimate purchaser the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers." The agency believes that the usefulness of the additional information to consumers is not of a level that justifies requiring it, but is sufficiently useful that manufacturers should be permitted to provide it if they so choose.

Other issues related to the definition of "Carline." NHTSA received a number of comments concerning whether engine types, body styles, and/or drive systems should be considered in making carline determinations. The agency notes that these factors, unlike country of assembly, are related to degree of commonality in construction.

As discussed above, AAMA argued that to maintain consistency among Federal regulations and to minimize the administrative burden, the definitions and interpretation of "carline" used for the Labeling Act should be the same as those used for CAFE. That organization stated that there should be no further segregation of carlines by engine type, and that light trucks should not be divided by type of driveline. According to AAMA, these separations would not provide more meaningful information to the consumer. That commenter stated that items such as 4-wheel drive and engine types are customer options and should not be used to differentiate carlines. AAMA noted that differences in engine sourcing will be reflected on the label under country of origin of the engine. AAMA stated that it supports the agency's proposal not to subdivide the carline definition for sedans and station wagons or fuel economy model types. It argued that adding more characteristics to define carline would increase the compliance costs to the vehicle manufacturer, would not add any value to the label, and would confuse the customer. It stated that the proposed definition should be revised by deleting a sentence stating that 2-wheel and 4-wheel drive versions of light trucks are treated as separate carlines, and by replacing a reference to "utility vehicles" with the term "special purpose vehicles."

Toyota argued that manufacturers should have the option of separating carlines by engines and by drive systems. That manufacturer stated that such separations would further the Act's purpose of providing the consumer information on equipment content, by giving consumers more precise content information for the particular model being considered for purchase. Toyota stated that because this would create an additional burden, it should be at the option of the manufacturer.

Honda stated that it supports differentiating carlines by engine type, because such separation would improve the accuracy of the information on the label. That company stated that sourcing of parts may be different for different engine types. Honda indicated that it strongly supports retaining station wagons within the carline of the same name, consistent with EPA's inclusion of station wagons within the carline of the same name for purposes of computing the carline's domestic content for CAFE.

BMW stated that with respect to differentiating carline by engine type and drive type, it believes the relevant

portion of the carline definition is for the purpose of providing relief to manufacturers rather than imposing a requirement on them. It stated that it believes that using the definition verbatim from the legislation and allowing manufacturers discretion to decide which models to include in the carline calculations, in conjunction with clarification from the manufacturer of the models that were used in the calculations, would result in the best and most accurate information to potential consumers.

Nissan stated that it believes carlines should not be separated by engine types, body styles or drive systems. According to that manufacturer, it would take a major change in the foreign content of those parts to result in a significant change in carline content percentages. Nissan stated that additional calculation and the resulting record keeping requirements by engine types, body styles, and drive systems would impose a significant administrative burden on manufacturers, and would not result in an appreciable increase in the accuracy of the content information on the label.

After considering the comments, NHTSA has concluded that engine types and drive systems should not be considered in making carline determinations. These features are typically customer options for particular make/models, similar to options related to level of decor. The agency believes that these features are too insignificant to be considered in making carline determinations, i.e., if vehicles are essentially the same except for the fact that one has a larger engine or 4-wheel drive, there is sufficient commonality of construction that the vehicles should be in the same carline. NHTSA does not believe that a manufacturer option should be provided in this area, because it could confuse consumers if "carline" has a different meaning for different vehicles. Moreover, the agency believes that separation by engine type and drive system would be unlikely to have a significant impact on the content percentages provided on the label.

The agency also generally agrees with AAMA that, to maintain consistency among Federal regulations and to minimize the administrative burden, the definitions and interpretation of "carline" used for the Labeling Act should be the same as those used for CAFE. NHTSA notes that station wagons are included in the same carline as similar sedans, as in CAFE. This follows from section 210's language that carline is not generally distinguished by such characteristics as roof line, except for light duty trucks. Consistent with CAFE, special purpose vehicles, vans and pickup trucks are considered to be in different carlines.

b. Final assembly/final assembly point. Section 210 provides that costs incurred at the final assembly point and beyond, including the costs of assembly and labor, are not included in the calculation of parts content. NHTSA noted in the NPRM that manufacturers may conduct some pre-assembly operations, e.g., production of equipment, at the same location as final assembly. The agency tentatively concluded that such operations should be treated the same as the operations of an allied supplier. The agency proposed to specify a particular phase in the assembly process, for both the body and chassis, that would mark the beginning of final assembly. This was reflected in specific proposed definitions for "final assembly" and "final assembly point."

AAMA stated that under NHTSA's proposal, the painted body and chassis would be considered a substrate to which passenger motor vehicle equipment is attached to produce a finished vehicle. AAMA stated that this approach is contrary to the generally accepted definition of the passenger motor vehicle equipment assembly process. That organization agreed, however, that the production of certain equipment at the final assembly point should not be considered part of final assembly but should instead be included in the valuation of the motor vehicle equipment and content calculations.

AAMA recommended that the agency define "final assembly" to include all operations involved in the assembly of the vehicle performed at the final assembly point, including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes. AAMA stated that its definition is consistent with the statute and an improvement over the proposal in that it (1) eliminates the conflict between regulations and normal business practice, (2) eliminates the ability of a manufacturer to generate a considerable amount of U.S./Canadian value added for the assembly operation that the proposed regulations would allow prior to the "final assembly," (3) eliminates ability of a manufacturer to shift value added simply by establishing "transfer" prices for all of the passenger motor vehicle equipment that is produced prior to "final assembly," and (4) eliminates the burden on a manufacturer associated with changing systems simply to meet NHTSA's proposed definition.

AAMA also recommended that the agency change the proposed definition of *final assembly point*, in a manner consistent with its recommendation concerning the definition of *final assembly*. That commenter also stated that the proposed definition creates ambiguity by introducing the term "pre-final assembly," and that the proposed regulation does not state how this equipment is to be treated for determining origin. AAMA recommended a specific definition for "final assembly point."

Ford stated that it agrees that in-plant pre-assembly and manufacturing should be included in the domestic and foreign content of the vehicle and the value treated as operations of an allied supplier. It argued, however, that the proposed definition of "final assembly" goes beyond the point that most manufacturers track parts cost. Ford stated that operations performed at the final assembly point, including body assembly and painting, are usually not contained in the manufacturer's final assembly bill of material. Ford argued that in-plant pre-assembly should include only machining, stamping, molding operations, and engine or transmission assembly.

AIAM stated that the point of final assembly should be considered to be no sooner than the point at which the engine and vehicle body are fastened together. That organization argued that the Labeling Act defines final assembly as the time when "all component parts necessary to the mechanical operation of such automobile are included." AIAM stated that the proposed definition would defy the stated intent of the Act and defy all conventional wisdom with respect to the automotive manufacturing process.

Toyota also argued that the point of final assembly should be considered to be no sooner than the point at which the engine and vehicle body are fastened together. It stated that for any vehicle, regardless of the sequence of assembly operations, there is always a point where the engine is united with the body. According to Toyota, section 210(f)(14) defines *point of final assembly* in terms of completeness. That commenter argued that the proposed final assembly points for the body and chassis are inconsistent with the Act because all component parts necessary to the mechanical operation of the vehicle are not yet present and included with the vehicle at those points.

Toyota also stated that the point of final assembly must serve as the point

before which assembly labor is included in the calculation and after which it is not. That manufacturer stated that the proposed regulation is not clear with respect to whether labor used in manufacturing the body after the point at which it emerges from painting but before it is attached to the chassis or cradle is included or excluded. Toyota stated that only by specifying a single point of final assembly can this technical problem be solved.

Several other foreign vehicle manufacturers made similar comments. Nissan stated that an appropriate point to be identified as the beginning of final assembly is the moment in the production process just before the attachment of the engine and drive train to the chassis. Mitsubishi stated that the point where final assembly begins should be defined as the point at which the engine and body are fastened. According to that company, this would be more consistent with the agency's proposed definition of "final assembly point," where all components and parts necessary to the mechanical operation of such automobile are included.

Honda took a different position in its comment. That manufacturer stated that it strongly supports the agency's proposal to treat in-house production of parts and components as if the equipment were produced by an allied supplier. Honda stated that this is necessary for consistency among manufacturers. Noting that the agency proposed to define *final assembly point* as a particular phase in the assembly process, Honda stated that the proposed treatment of this issue is sensible. According to that manufacturer, defining "final assembly point" as the moment in the process at which the body leaves the paint shop is generally appropriate. However, Honda requested clarification of this definition with respect to the substantial additional "pre-final assembly" work that remains to be performed on its vehicles' doors after the body leaves the paint shop. Honda argued that door subassembly labor should be included within computation of U.S./Canadian value added, and stated that it assumes this subassembly labor would be included under the proposed regulation because the work is performed off the main assembly line.

BMW stated that NHTSA's proposal defined "final assembly" with regard to the body as the point at which the body leaves the paint shop. That company commented that this portion of the definition is very precise and that the costs associated with it will likely be similar between manufacturers regardless of painting process or vehicle design. BMW commented, however, with regard to definition of final assembly of the chassis, that it believes a manufacturer would be able to tailor the assembly process to take advantage of the definition and alter its carline's part content percentages. That company stated that this portion of the definition employs the point at which the engine and transmission are placed on the chassis frame or on the assembly cradle. According to BMW, because this point can be varied, a manufacturer would have the opportunity to install or not install equipment such as the brake system including ABS, wheels and tires, and interior components and trim. BMW commented that a manufacturer could choose to install the engine last, essentially including all labor and overhead in its parts content calculations. BMW recommended that the agency investigate assembly processes and include a more definitive point to stop including costs associated with the chassis assembly.

NHTSA believes that the comments concerning the proposed definitions for "final assembly" and "final assembly point" raise two important, related issues: (1) What operations should be considered to be part of "final assembly" and therefore excluded from parts content calculations, and (2) Whether the proposed regulation distinguishes such operations in a manner that is appropriate for all manufacturers. As discussed below, after considering the comments in light of these two issues, the agency has concluded that definitions along the lines of those recommended by AAMA should be adopted.

The starting place for resolving the question of what operations should be considered to be part of "final assembly" and therefore excluded from parts content calculations is the language of the Labeling Act. The Act includes several relevant sections. First, section 210(b)(1)(A) provides that the label must indicate "the percentage (by value) of passenger motor vehicle equipment installed in such vehicle within a carline which originated in the United States and Canada * * *." Second, section 210(f)(10) provides that "(c)osts incurred or profits made *at the final vehicle assembly point* and beyond (i.e., advertising, assembly, labor, interest payments, profits, etc.) shall not be included in [the calculation of value added in the United States and Canada]." Third, section 210(f)(14) defines "final assembly point" as "the plant, factory, or other *place* at which a new passenger motor vehicle is produced or assembled by a manufacturer and *from* which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle * * *." (Emphasis added.).

While final assembly point can be considered as either a physical place or a phase in the assembly process, it is significant that section 210 defines it as a place, i.e., the plant, factory, or other place at which a new vehicle is produced or assembled. Thus, looking at the plain language of section 210, assembly and labor costs "at" the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations.

It is also significant that the language in section 210(f)(14) about the vehicle being in such a condition that "all component parts necessary to the mechanical operation of such automobile are included with such vehicle" refers to the vehicle when it leaves the final assembly point for delivery to a dealer or importer. In citing this language for the proposition that "final assembly" is defined in terms of completeness, AIAM and Toyota confuse the completion of final assembly with the final assembly process. Section 210(f)(14) defines "final assembly point" as the plant, factory, or other place at which a vehicle is "produced or assembled" by a manufacturer. All of the operations that make up the production or assembly process are part of final assembly. There is no basis to interpret section 210(f)(10)'s requirement that assembly and labor costs incurred "at the plant, factory or other place" at which a new vehicle is assembled only applies to the costs associated with the last step in completing the vehicle.

Since section 210 expressly provides that assembly and labor costs at the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations, NHTSA believes that all assembly and labor costs that are ordinarily associated with final assembly must be excluded. However, the agency believes that the costs associated with parts production that may occur at a final assembly plant should not be excluded from parts content calculations. The agency notes the following argument made by the UAW in commenting on the request for comments:

> The definition of *passenger motor vehicle equipment* in section 210(f)(4) of the statute refers to components "received at the final vehicle assembly point." Section 210(f)(14) then goes on to define "final assembly point" as meaning "the plant, factory, *or other place* at which a new passenger motor vehicle is

produced or assembled * * *." (Emphasis in UAW comment.) We believe these definitions can and should be interpreted liberally to include parts and components which are built "in-house" within the scope of "passenger motor vehicle equipment." Even though such parts and components may be built in the same manufacturing facility, they are still built in a different "place" than where the vehicles are actually assembled (i.e., in a different department or operation within the plant) * * *. (T)he underlying purpose of the statute is to distinguish between labor performed in the final assembly of a vehicle and the value of the parts which go into the vehicle. Including "in-house" parts does not do violence to this distinction.

NHTSA agrees with this comment of the UAW. A failure to consider parts produced at the final assembly plant as "passenger motor vehicle equipment" would result in significant differences among manufacturers. Further, if a plant were very highly integrated, it could result in a situation where the parts content percentages do not reflect the greater number of a vehicle's parts.

At the same time, however, NHTSA must give full effect to the Congressional intent to exclude the costs of final assembly from parts content calculations. The agency believes that the best way to accomplish this is the method suggested by AAMA: define *final assembly* to include all operations involved in the assembly of the vehicle performed at the final assembly point (the final assembly plant), including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes.

Under this approach, all costs incurred at the final assembly plant are excluded except for those that are incurred in producing either engines/transmissions or in producing parts using forming processes such as stamping, machining or molding. In addition to ensuring that final assembly costs are excluded as required by section 210, the agency also believes that a definition along these lines is much clearer than the proposed definition. For example, this type of definition will not raise issues concerning whether a part is assembled on the main assembly line or off of it.

NHTSA cannot accept the recommendation of foreign vehicle manufacturers to define final assembly as starting at the time when the engine and body are fastened together. Under such a definition, manufacturers could add the engine to the body as the last step in assembling the vehicle, thereby reducing final assembly costs to a nullity. Such an approach would be inconsistent with the statutory requirement to exclude assembly and labor costs at the final assembly plant from parts content calculations.

The agency believes that a similar problem could occur under the proposed definitions for *final assembly* and *final assembly point*. As suggested by BMW's comment, manufacturers could tailor the assembly process to take advantage of the definition. This could also reduce the costs of final assembly to a value close to a nullity.

NHTSA notes that the cost of painting the vehicle body is considered to be part of the cost of final assembly under the definitions being adopted for the final rule, assuming that it occurs at the final assembly plant. While this is a different result than under the proposed definitions, the agency believes it is appropriate since painting is an operation that occurs at essentially all final assembly plants.

The agency also notes that the fact that final assembly labor and other costs are not included in parts content percentages does not mean that they are not reflected on the label. The origin of these costs is reflected in the portion of the label which states the final assembly point by city, state and country.

c. Passenger motor vehicle equipment. Section 210(f)(4) provides that the term *passenger motor vehicle equipment* means "any system, subassembly, or component received at the final vehicle assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser." That section also provides that the term does not include "minor parts, such as attachment hardware (nuts, bolts, clips, screws, pins, braces, etc.) and such other similar items" as may be prescribed by rule.

Dealer- and port-installed equipment. NHTSA tentatively concluded in the NPRM that dealer- or port-installed optional equipment should be excluded from content calculations. The agency noted that the definition of *passenger motor vehicle equipment* in section 210(f)(4) is limited to equipment delivered to the manufacturer's final assembly point for installation on, or attachment to, a vehicle at the time of its initial shipment by the manufacturer to a dealer. NHTSA noted further that equipment sent directly to dealers or ports is never sent to the manufacturer's final assembly point.

Ford stated that it agrees that dealer- and port-installed items of equipment should be excluded from content calculations since they do not come within the statutory definition of passenger motor vehicle equipment. That company added, however, that the agency should reserve the option to address this issue if it appears that any manufacturer is, to a significant degree, installing options beyond the final assembly point.

AIADA stated that it strongly supports the tentative conclusion that dealer- or port-installed optional equipment should be excluded from content calculations. That organization stated, however, that the definition of *passenger motor vehicle equipment* should be clarified. AIADA argued that while the authors of the Labeling Act may have attempted to exclude port-installed and dealer-installed parts such as air conditioners, wheels and stereo systems, the words "for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer" may not be interpreted to exclude these parts. AIADA suggested adding the words "and installed on" to the definition, i.e., components received at final assembly point for installation on, or attachment to, *and installed on* such vehicle.

After considering the comments, NHTSA continues to believe that dealer- or port-installed optional equipment should generally be excluded from content calculations since such equipment is ordinarily not received at the final assembly point. However, the agency does not agree with AIADA's suggested clarification. That organization appears to be referring to equipment which is received at the final assembly point and travels with the vehicle to the dealer, where the final installation is made. NHTSA believes that such equipment does fall within the definition of *motor vehicle equipment*, i.e., it is received at the final vehicle assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. The agency views the fact that the equipment travels with the vehicle as a form of attachment to the vehicle.

Exclusion of minor parts. The agency tentatively concluded in the NPRM that all parts received at the final assembly point, including paint, sealers and solvents, are to be included as "equipment" for purposes of the Labeling Act, with the exception of the minor parts specified in the statute. However, NHTSA encouraged commenters to suggest other specific minor parts that should be excluded, and to comment on whether paint.

sealers and solvents should be included as equipment.

AAMA argued that the exclusions should be broadened. That organization stated that it would prefer the agency to exclude all items not covered under NAFTA Annex 403.1. AAMA stated that since the agency had elected not to parallel that aspect of NAFTA, it recommended the following additional exclusions: lubricants, grease, gasoline, oil, blackout, phosphate rinse, sealers, windshield washer fluid, auto transmission fluid, anti-freeze, tape, straps, hinge covers, valve stems, labels, owners manuals, hinges, bulbs, power steering fluid, knobs, bushings, fasteners, decals, isolators, tire assembly fluid, spacers, clamps, rivets, retainers, deadeners, adhesives, links, springs (except springs for suspension systems), grommets, wheel weights, fuses, plugs, paint, clear coat, and primer.

AAMA stated that the listed components represent less than three percent of material value, but 30–35 percent of the number of part numbers in a passenger motor vehicle. That organization argued that the recommended list would exclude a minimal value from the definition of passenger motor vehicle equipment, while significantly reducing the number of parts and suppliers that have to be solicited for content information. AAMA also recommended that outside and allied suppliers be permitted to default the values of these components to the country of origin of the passenger motor vehicle equipment in which they are incorporated.

Ford stated that items such as paints, sealers and solvents should not be included in the definition of passenger motor vehicle equipment. That company stated that both bulk parts and raw materials should be excluded from the vehicle content calculations.

Ford noted that the Labeling Act defines *passenger motor vehicle equipment* as "a system, sub-assembly or component" received at the final vehicle assembly point for installation on, or attachment to, the vehicle. Ford argued that if Congress had intended to add bulk items or items such as paint and solvents or bulk parts, such as wheel weights and rivets, to the calculation, it would not have used the terms "system, sub-assembly or component." That company stated that in other sections of the Act, where Congress intended raw and bulk materials to be included, it used the terms "foreign content" or "material." Ford stated that paint, solvents, and sealers should not be considered systems, sub-assemblies, or components because, among other reasons, these items only have part numbers when ordered in bulk quantities. That company supported the list of additional exclusions set forth in AAMA's comment.

A number of manufacturers, including Toyota, Honda, and Nissan supported treating paint, sealers and solvent as equipment. Honda stated that it believes that NHTSA appropriately defined minor parts to be excluded from the calculation in the NPRM. Nissan, however, stated that it is not sure whether everything other than attachment hardware can be properly considered passenger motor vehicle equipment and suggested that NHTSA consider how other regulatory and/or legislative schemes may determine whether a particular item is an auto part.

Isuzu stated that it believes attachment hardware such as nuts, bolts, clips, screws, pins and braces must be included in, rather than excluded from, the definition of "passenger motor vehicle equipment." That company stated that the vehicle manufacturer specifies part numbers for these parts. It is not easy to identify these parts on the carline parts list and then separate them from other parts.

BMW stated that it supports including items that become a permanent part of the vehicle such as adhesives, sealers, and paint. However, that manufacturer recommended that consumable items such as windshield washer and gasoline not be included.

APMA stated that it supports the exclusion of paint, sealers and solvents on the grounds that they are almost invariably of local origin, and their exclusion will reduce the regulatory burden to manufacturers and paint suppliers.

The UAW stated in its comment on the request for comments that, to avoid undermining the intent of the Labeling Act, the exclusion for minor parts should be narrowly construed. The UAW stated that it does not believe the definition should be interpreted to exclude paint or sealer, or raw materials, fasteners, or general purpose hardware. The UAW stated that many of these items have substantial value, and that excluding them would only serve to provide consumers with a misleading impression of the domestic versus foreign content of motor vehicles.

After considering the comments, the agency has decided to exclude some additional items from the definition of "motor vehicle equipment," but not the entire list suggested by AAMA. With respect to AAMA's comment that it would prefer that all items not covered under NAFTA Annex 403.1 be excluded, the agency notes some major items of motor vehicle equipment are not covered by that annex, including air bags. Therefore, it would not be appropriate to use NAFTA Annex 403.1 as the basis for determining what additional "minor parts" should be excluded. NHTSA also notes that it cannot adopt Isuzu's suggestion to include attachment hardware such as nuts, bolts, clips, screws, pins and braces within the definition of "passenger motor vehicle equipment," since those items are expressly excluded by the statutory definition.

The agency has decided to exclude the following additional items from the definition of *passenger motor vehicle equipment:* phosphate rinse, tire assembly fluid, gasoline, oil, windshield washer fluid, fasteners, rivets, grommets, and wheel weights. The first five items are consumable items which are either consumed in the assembly of the vehicle or are replaced within the first few days or months of vehicle ownership. Therefore, the agency believes that those items should not be considered part of the vehicle. The last four items are either forms of attachment hardware similar to the other ones listed in the statutory definition, or types of items whose collective value for a particular motor vehicle will always be negligible.

The agency is not adopting the other exclusions suggested by AAMA because the items are not similar to the ones listed in the statutory definition and because the collective value of the items for a particular motor vehicle can be substantial. With respect to Ford's comment concerning the meaning of "system, subassembly, or component," the agency believes that the term "component" is sufficiently broad to include such things as paint.

For the minor items which are excluded from the definition of *passenger motor vehicle equipment,* the agency is permitting allied and outside suppliers to treat the cost of the minor items as value added in the country of assembly of the equipment. NHTSA notes that this treatment is only necessary to the extent that such minor items are part of other equipment supplied by a supplier. To the extent that such minor items are supplied directly to a manufacturer, or are used by a manufacturer in assembly of a vehicle, they are not considered passenger motor vehicle equipment.

2. Items To Be Provided on the Label; Wording of the Label (Section 583.5)

NHTSA proposed to require manufacturers to affix to all new passenger motor vehicles a label which

provides the following five items of information:

(1) *U.S./Canadian Parts Content*—the overall percentage, by value, U.S./Canadian content of the motor vehicle equipment installed on the carline of which the vehicle is a part;

(2) *Major Sources of Foreign Parts Content*—the names of the two countries, if any, other than the U.S./Canada, which contributed the greatest amount (at least 15 percent), by value, of motor vehicle equipment for the carline, and the percentage, by value, of the equipment originating in each such country;

(3) *Final Assembly Point*—the city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) *Country of Origin for the Engine;*

(5) *Country of Origin for the Transmission.*

The agency proposed to require specific language for the label, including a heading, two subheadings, and an explanatory note concerning the meaning of parts content. The NPRM included a sample label, consistent with the proposed requirements, which read as follows:

PARTS CONTENT INFORMATION

For vehicles in this carline:
U.S./Canadian Parts Content: 50%
Major Sources of Foreign Parts Content:
Japan: 20%
Mexico: 15%

For this vehicle:
Final Assembly Point: Flint, Michigan, USA
Country of Origin:
Engine: U.S.
Transmission: Canada

Note: The Parts Content of a typical vehicle makes up about (a range was to be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

The agency stated in the NPRM that it believed the proposed explanatory note would clarify the meaning of "parts content" to consumers, and help them understand the significance of the content information provided on the label. NHTSA noted that since the percentage of a vehicle's total wholesale cost which is made up of parts content varies for different vehicles, it believed that it would be appropriate to state the information in a range, e.g., 60 to 70 percent, 70 to 80 percent, etc. Since the agency did not have this information, it requested manufacturers to provide the information for several specific vehicles, as well as their recommendation for a range to include in a final rule.

a. Use of the term "parts content." AAMA objected to the term "U.S./Canadian Parts Content" for describing the first item of information on the label. It argued that the statute specifies use of the term "U.S./Canadian Content," and that the inclusion of the word "parts" is contrary to the statute.

NHTSA acknowledges that section 210(b)(1)(A) specifies that the information "be identified with the words 'U.S./Canadian content.'" However, the agency believes the term U.S./Canadian Parts Content is consistent with this statutory requirement. The statutory language "U.S./Canadian content" is included within the term "U.S./Canadian Parts Content." Consistent with its authority to specify the form and content of the required label, the agency added the word "parts" to indicate to prospective purchasers that the identified U.S./Canadian content is for a vehicle's parts (within a carline) rather than for the vehicle as a whole. To the extent that AAMA objects to the agency breaking up the phrase "U.S./Canadian content," NHTSA could instead specify a parenthetical at the end of the term U.S./Canadian content, such as (parts). However, the agency believes that the term U.S./Canadian Parts Content is preferable since it is easier to read.

NHTSA notes that AAMA also objected to use of the term "parts" instead of "equipment" in the purpose section of Part 583. That objection would presumably also apply to the wording on the label. AAMA contended that the calculations required by the statute are based on the value and content of passenger motor vehicle equipment and not "parts." Since the term "passenger motor vehicle equipment" includes all parts except minor parts such as attachment hardware, NHTSA believes that the terms "equipment" and "parts" are interchangeable. For purposes of the label, the agency believes that the term "parts" is preferable to "equipment." The former term is shorter and therefore takes less space. Moreover, the agency believes that consumers are more likely to understand the term "parts." While it is common to refer to a vehicle being made up of parts, one does not ordinarily refer to a vehicle being made up of equipment. Also, the term "equipment" may have the connotation of optional accessories to consumers.

b. Explanatory note. The agency received numerous comments on its proposal to require an explanatory note concerning the meaning of parts content. As discussed below, some commenters argued that no note should be permitted or required; others agreed that a note should be provided but argued that it should be worded differently. No commenters supported the proposed wording. Numerous manufacturers argued that the ratio of parts content value to wholesale dealer cost varies so widely among vehicles that there is no such thing as a "typical vehicle" in this context.

AAMA argued against including the explanatory note. It stated that the note is not required by statute and adds a measure of confusion to the consumer because of the broad range of ratios that exist for vehicles. GM argued that there is no authority under the Labeling Act for such a note. It stated that the proposed note does not clarify the information on the label, is an approximation, and includes elemental costs not considered by the Act. Ford stated that if NHTSA believes that clarification is necessary, it should consider an explanatory brochure.

AIAM stated that it is opposed to requiring information on the label concerning a parts content percentage range as it relates to the total wholesale cost to the dealer, as this additional information would only serve to confuse the consumer.

JAMA, however, argued that it is vital to consumer understanding to clarify the fact that the label calculation does not include vehicle final assembly labor. That organization stated that the proposed note would clarify this to some degree, but does not go far enough. It suggested adding the following words to the note: "and does not include vehicle final assembly labor." JAMA also argued that the note should include an additional statement about assembly labor for engines and transmissions not being included in country of origin label calculations for those items.

Toyota stated that the proposed note would not be helpful because of the necessary broadness of the range and the potential for additional consumer confusion. That manufacturer also stated that it does not believe a required, industry-wide explanatory statement is necessary. Toyota indicated, however, that if the agency does require an explanatory statement, it believes the statement should be one that consumers readily would understand and that would avoid confusion. It suggested the following statement: "The U.S./Canada parts content on this label does not include final assembly or distribution costs for this vehicle."

Honda supported the idea of an explanatory note, since it believes that consumers are likely to be misled by the label without it. That company did not support the proposed wording, however, since the language does not clearly tell consumers that certain specific costs are excluded. Honda also

stated that it believes the inclusion of a range of the percentage of parts costs would be confusing to consumers. Honda suggested the following explanatory note: "U.S./Canadian parts content on this label does not include final assembly or distribution costs for this vehicle."

Nissan suggested that each manufacturer be allowed, at its discretion, to include or not include additional information or explanation relevant to that manufacturer or particular carline. It stated that introducing a new percentage on the label that is calculated from a different base will only add to the consumer's confusion. Nissan stated that if the agency decides to require a statement, it suggests the following language: "The parts content percentages identified here do not value similar parts equally nor reflect the value of final assembly labor or parts or distribution expenses, all necessary aspects of determining the ultimate value of a vehicle."

AIADA stated that it supports the proposal to include a statement on the label to indicate that parts content of a vehicle does not represent the total value of the vehicle. That organization stated that it believes the statement should include a mention of what is not included, specifically labor and distribution costs. That organization also argued that the agency should go further than providing a simple note. It argued that the label should explain such things as roll-up, roll-down for outside suppliers (roll-up, roll-down is discussed later in this preamble), and whether or not the vehicle is domestic or import for CAFE purposes.

After considering all of the comments, and noting that none of the commenters provided information concerning the range of parts content as a percentage of wholesale cost, NHTSA has decided to require a brief explanatory note to explain the meaning of parts content. Since consumers are not likely to be familiar with the concept of parts content, the agency is concerned that they are likely to confuse parts content with overall vehicle content without such a note.

NHTSA is persuaded by the comments, however, that the note should not provide a range for the ratio of parts content value to wholesale dealer cost for a typical vehicle. The agency agrees that such a statement might confuse consumers.

The agency has decided to require the following explanatory note at the end of the label: "Parts content does not include final assembly, distribution, or other non-parts costs." NHTSA believes that the same note should be provided for all vehicles, to ensure brevity and clarity. With respect to GM's comment concerning authority, the agency notes that section 210(c) provides the agency with authority to prescribe the form and content of the required label. The agency also notes that manufacturers choosing the option, discussed earlier in this preamble, of providing additional information for carlines assembled in both the U.S./Canada and other countries, would be required to include it at the end of this explanatory note.

c. Place of final assembly. Toyota stated that the city of assembly should only be required for vehicles assembled in the U.S. That manufacturer argued that vehicles assembled in other countries should be labeled only with the country, not city, of final assembly, since the names of many cities in foreign countries in which automobiles are assembled are likely to be unfamiliar to many if not most consumers.

NHTSA notes that section 210(b)(1)(B) expressly states that the label must indicate "the final assembly point by city, State (where appropriate), and country of such automobile." Therefore, the agency does not have the discretion to permit the names of foreign cities to be excluded.

3. Procedure for Determining U.S./Canadian Parts Content (Section 583.6)

As discussed in the NPRM, in order to calculate the percentage U.S./Canadian parts content (the first item of information on the label), the vehicle manufacturer must know:

(1) the U.S./Canadian content (by value) of each item of motor vehicle equipment used to assemble the vehicles within the carline;

(2) the total value of each such item of equipment, i.e., the price it will pay for each such item of equipment; and

(3) the unit volume of each such item of equipment for each carline.

The agency stated in the NPRM that, in calculating the U.S./Canadian parts content for each carline, the manufacturer must reasonably project the installation rates for all equipment offered on that carline. For example, if a carline with a standard manual transmission is offered with an optional automatic transmission, the manufacturer must project the sales of each transmission in advance of the model year. This also applies to all other equipment options or choices for the vehicle.

Much of the information that manufacturers use to calculate the first item on the label must come from parts suppliers. These calculations are made once for each model year, prior to the model year. As discussed later in this preamble, the agency is requiring suppliers to provide information to manufacturers concerning the content of the parts they supply.

NHTSA proposed a specific procedure in § 583.6 of the proposed regulation for determining U.S./Canadian parts content. Section 583.6(b) set forth a procedure for determining the value of items of equipment. It provided that the value of an item of equipment is generally the price paid by the manufacturer for the equipment as delivered to the final assembly point, and that the value of an item of equipment produced at the final assembly plant is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment.

Section 583.6(c) set forth a procedure for determining the U.S./Canadian percentage of the value of equipment. It set forth different procedures for outside and allied suppliers, to reflect the fact that the statutory "roll-up, roll-down" provision applies to outside suppliers, but not allied suppliers.

Section 583.6(d) set forth a procedure for determining the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment. This procedure involved adding up the total value of all of the equipment to be installed in that carline during the next model year, dividing the value of the U.S./Canadian content of such equipment by the total value of the equipment, and multiplying the resulting number by 100.

a. Determining the value of items of equipment. AAMA commented that 583.6(b) puts the valuation emphasis on where material is received as opposed to from whom it is purchased. That organization stated that for equipment purchased from outside suppliers by either a vehicle manufacturer or allied supplier, valuation should be based on the price that exists in the financial records at the time the content is calculated. AAMA stated that for equipment purchased from allied suppliers, valuation should be based on the established practices of the manufacturer, which could include a transfer cost or transfer price methodology. That organization stated that if a transfer price is used, the price should be consistent with customs valuation or that used for internal management. AAMA also noted that § 583.6 does not address determination of value for items of equipment delivered to allied suppliers.

NHTSA notes that valuation is based on where material is received because section 210(f)(13) provides, with respect to passenger motor vehicle equipment

which is of U.S./Canadian origin, that "(f)or both outside suppliers and allied suppliers the value used shall be the purchase price of the passenger motor vehicle equipment as paid at the final assembly point." The agency also notes that section 210(f)(10)(A) provides, with respect to the term "value added in the United States and Canada," that costs incurred or profits made *at the final vehicle assembly point and beyond* * * * shall not be considered in such calculation." This implies that all costs up to delivery of the equipment to the final assembly point are included. NHTSA therefore believes, with respect to motor vehicle equipment that is delivered to the final assembly point, that the value of the equipment should be the price paid by the manufacturer for the equipment as delivered to the final assembly point.

The agency believes that a specification that valuation be based on the price that exists in the financial records at the time the content is calculated would be too vague. It would be unclear, for example, whether the price in question was for the equipment as delivered to the final assembly point. Similarly, a specification that valuation be based on the established practices of the manufacturer would also be vague.

To the extent that it is not possible to value equipment based on the price paid by the manufacturer for the equipment as delivered to the final assembly point, e.g., because the equipment is produced at the final assembly point or a transfer price methodology is used, the agency believes, for purposes of consistency among manufacturers, that value should be based on the price that the manufacturer would have paid for the equipment as delivered to the final assembly point. The final rule therefore provides that the value of each such item of equipment is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment. NHTSA is also setting forth essentially the same valuation procedures for equipment delivered to an allied supplier, except that valuation is based on the price paid for the equipment as delivered to the allied supplier.

b. Determining the U.S./Canadian percentage of the value of items of equipment. APMA stated that if NHTSA does not adopt the AIAG model of content calculation, the regulation should specifically state how outside suppliers should calculate U.S./Canadian content. That organization stated that, in the NPRM, the agency relied on the definitions of *value added* and *foreign content* in the statute. APMA stated that *value added* is defined as the total purchase price (presumably paid by the customer) less the total purchase price (presumably paid by the supplier) of foreign content. APMA stated that *foreign content* is simply defined as equipment which is "not determined to be U.S./Canadian origin." That organization stated that the statute and regulation give no direction as to how this determination is to be made. APMA also stated that while the agency noted that suppliers "may need in some cases to arrange to obtain information from their supplier," it did not explain what that information is and how it is to be obtained.

APMA stated that the absence of any specific regulatory direction on the way in which outside suppliers are to calculate "valued added in the U.S./Canada" is likely to lead to numerous interpretations and challenges. For example, can suppliers count all costs and profit or are some costs and profits excluded? How will a supplier know with certainty that an input qualifies as U.S./Canadian content? APMA stated that it believes that adoption of the AIAG content calculation is the best approach and would have minimal regulatory cost burden. That organization stated that if the agency does not follow that approach, it suggests adding the following additional definition:

> Value is added in the United States or Canada by an allied supplier or outside supplier to the extent that the supplier produces or assembles passenger motor vehicle equipment at a plant or factory located within the territorial boundaries of the United States or Canada.
>
> All costs incurred (other than the purchase price of foreign material received at such plant) and all profits made at such plant shall form part of the value added in the United States and Canada. Foreign material shall be limited to materials which have been produced or assembled outside of the territorial boundaries of the United States or Canada and which have not undergone any further production or other operation within the territorial boundaries of the United States or Canada before being received by such supplier or an affiliate of such supplier.

Nippondenso America stated that the specified method for calculating U.S./Canadian content should state that value added in the U.S. and Canada includes profit and processing costs such as labor, depreciation, expenses, etc. (originating in the U.S. or Canada), to avoid any misunderstandings or confusion regarding determinations of the U.S./Canadian content.

Nissan stated that the proposed regulation does not address how suppliers should treat duty. Nissan recommended that suppliers treat duty paid as domestic. It stated that this would be consistent with the treatment of duty under CAFE.

NHTSA agrees with the commenters that it is appropriate to provide additional clarification in the regulation concerning how suppliers are to calculate value added in the U.S./Canada. The agency notes that only allied suppliers typically need to calculate actual value added in the U.S./Canada of their equipment. As a result of the roll-up, roll-down provision, outside suppliers only need to determine whether the value added in the U.S./Canada is at least 70 percent or not. In order to make this determination, of course, outside suppliers need to understand how value added in the U.S./Canada is calculated. Moreover, if the value added in the U.S./Canada of their equipment is close to 70 percent, outside suppliers will need to calculate actual value added.

NHTSA believes that APMA's recommendation that the agency adopt the AIAG content calculation procedure as the best approach for calculating value added in the U.S./Canada is unclear. The AIAG, as an organization, represents an industry effort to, among other things, help suppliers comply with the Labeling Act. As pointed out by AAMA, however, "due to the lack of regulatory guidance, complete process definition has not been established." The agency assumes that AIAG will continue its efforts to help suppliers once today's final rule is issued. Since the AIAG has not completed the process of establishing a content calculation procedure, NHTSA does not know what APMA means in recommending that the AIAG procedure be adopted.

After considering the comments, the agency has decided to add the following clarifying language to § 583.6(c):

> (4)(i) Value is added in the United States or Canada by an allied supplier or outside supplier to the extent that the supplier produces or assembles passenger motor vehicle equipment at a plant or factory located within the territorial boundaries of the United States or Canada.
>
> (ii) In determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. Except as provided in (c)(3), material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. For any material which is imported into the United States or Canada from a third country, the

value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. Neither suppliers nor anyone else is required to trace the value added in the United States or Canada backwards; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign. *Example:* A supplier located in the United States or Canada uses sheet steel to produce exterior panels which are shipped to a final assembly plant. In determining the valued added in the United States or Canada of the exterior panels, the supplier must subtract the price it paid for the sheet steel except to the extent that the supplier determines that the price paid represents value added in the United States or Canada.

(iii) For the minor items listed in the § 583.4 definition of "passenger motor vehicle equipment" as being excluded from that term, outside and allied suppliers may, to the extent that they incorporate such items into their equipment, treat the cost of the minor items as value added in the country of assembly.

(iv) For passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of its material originated in the United States or Canada.

(v) The payment of duty does not result in value added in the United States or Canada.

In clarifying how suppliers are to calculate value added in the U.S./Canada, NHTSA believes it is important to keep in mind the statutory requirement that it adopt regulations that provide the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers. In order to make perfect determinations of the value added in the U.S./Canada of all passenger motor vehicle equipment, it would be necessary to trace all costs involved in producing such equipment, including the costs of all component parts, all the way back to raw materials. Even if such an effort were possible, it would be extremely costly.

In light of submissions from GM, Ford, Chrysler, Mitsubishi and AIAM in response to its request for comments, NHTSA explained in the NPRM that it agreed with the general premise that tracking and reporting requirements should be limited to "first tier" suppliers (including both suppliers which deliver equipment to the manufacturer itself and ones which deliver equipment to an allied supplier). The agency stated that no requirements would be imposed on suppliers earlier in the chain, but noted that suppliers which are subject to the proposed information requirements may need in some cases to arrange to obtain information from their suppliers.

A basic issue raised by APMA's comment is how, in the absence of extensive tracking requirements, "first tier" suppliers will know enough about the content of the materials they purchase from other sources, for incorporation into their equipment, to make the required determinations about U.S./Canadian content. In fact, the suppliers may not know, or be able to find out, the amount of the cost of such materials that represents value added in the U.S./Canada. APMA's comment also raises the issue of how suppliers are to treat such things as costs and profits.

The agency believes that the best way to resolve this potential problem is to specify simple procedures concerning the determination of value added in the U.S./Canada. NHTSA notes that the total value of an item of passenger motor vehicle equipment is determined under § 583.6(b). The relevant issue, therefore, is what part of that total value represents value added in the U.S./Canada.

NHTSA agrees with APMA that the basic way suppliers add value in the U.S./Canada is by producing or assembling passenger motor vehicle equipment within the territorial boundaries of the United States or Canada. The simplest method of determining the value added in the U.S./Canada for equipment produced or assembled within the territorial boundaries of the United States or Canada is to subtract from the total value of the equipment the value of any foreign materials used in such production or assembly.

The clarifying procedures therefore specify that, in determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. The procedures also specify that material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials.

Under this approach, neither suppliers nor anyone else is required to trace the value added in the United States or Canada back to raw materials; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign. NHTSA believes that this approach is consistent with section 210(f)(16), which specifies that "foreign" or "foreign content" mean "passenger motor vehicle equipment not determined to be U.S./Canadian origin."

The clarifying procedures also provide that for any material which is imported into the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. For purposes of simplicity and consistency, NHTSA believes it is appropriate to deem any materials which are imported in the United States or Canada from a third country as foreign. The agency believes that any attempt to separate out the possible portion of such materials that may have originated in the United States or Canada would involve extremely complex issues concerning how various costs are attributed to different countries. This would not provide significantly more useful information to the consumer, but would require a much more complicated regulatory scheme.

NHTSA notes that APMA recommended a somewhat different approach with respect to the treatment of foreign material. Under its suggested provision, foreign material would be limited to materials which have been produced or assembled outside of the territorial boundaries of the United States or Canada and which have not undergone any further production or other operation within the territorial boundaries of the United States or Canada before being received by such supplier or an affiliate of such supplier. The problem with this recommended provision is that the entire value of foreign material which has undergone further production or other operation within the U.S./Canada would be transformed into value added in the U.S./Canada. This would create a giant loophole by which foreign material could be transformed into U.S./Canadian content.

The above discussion has primarily concerned determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada. For equipment which is imported into the United States or Canada from a third country, the clarifying regulations specify that the value added in the United States or Canada is zero. The agency is taking this approach for the same reasons discussed above with respect to imported material that is used to produce or assemble passenger motor vehicle within the United States or Canada.

The clarifying regulations also specify that the payment of duty does not result in value added in the United States or Canada. While it may be necessary to pay duty as a condition of an item crossing a national border, such payment does not add any value to the item in the country to which duty is paid.

NHTSA is also including a provision which specifies that if a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. While the agency does not believe that this situation will occur very often, the provision ensures that U.S./Canadian content is not overstated as a result of the manufacturer or allied supplier simply assuming that equipment is of U.S./Canadian origin in the absence of information from the supplier. The provision does not affect the obligation of manufacturers and allied suppliers to request this information from their suppliers or the obligation of the suppliers to provide the information.

c. Determining the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment. GM stated that the agency had proposed that the proper method to establish the U.S./Canadian content for a carline is to estimate the installation rates for all equipment options and choices offered on that carline multiplied by the U.S./Canadian content value for each option or choice divided by the total value for all equipment, domestic or foreign. That company stated that it has found for cost management and planning purposes that the use of a high volume configuration carline model results in better management control of the assembly process than the so called average equipped carline model. GM stated that such a model has found wide acceptance in calculations made for corporate average fuel economy (CAFE) emission testing configurations, and most recently, for vehicle configurations under NAFTA. That company recommended that the agency permit manufacturers to use established carline cost management models for establishing the percentage U.S./Canadian content required to be included in the AALA domestic content label.

JAMA stated that it understands that it is NHTSA's intention that manufacturers project the sales mix of all of the potentially many models within a carline, including differences in series, engine type, transmission type, and other optional equipment, and to perform the weighted average carline calculation based on this model and equipment mix. That organization stated that it believes this calculation method would impose an unnecessarily great burden on manufacturers without a significant increase in the accuracy of the computed percentage. It recommended that agency permit a manufacturer, at its option, to use the U.S./Canadian parts content of a specific model, e.g., the best selling model of a carline, on a projected sales basis, which is considered to reasonably represent the entire carline.

Mazda stated that it believes proposed calculation method would impose too much burden on manufacturers, and recommended that NHTSA permit manufacturers to use U.S./Canadian parts content of a specific representative model within a carline, e.g., best selling model, as the parts content of the carline.

NHTSA does not disagree with the concept of permitting simplified procedures for estimating U.S./Canadian content, if such procedures would always ensure reliable results. However, the procedures suggested by the commenters, which are based on either a high volume configuration or best selling model, would not appear to always ensure meaningful results.

For example, as discussed above, vehicles within a carline may be assembled in both the U.S./Canada and a foreign country. If the high volume configuration or best selling model was produced in the U.S./Canada and the rest of the carline was produced in a foreign country, content calculations based on the portion of the carline assembled in the U.S./Canada would not be representative of the carline as a whole.

The agency believes it would inappropriate to permit simplified procedures that could produce unreliable results.

4. Procedure for Determining Major Foreign Sources of Passenger Motor Vehicle Equipment (Section 583.7)

As discussed in the NPRM, item two on the label, listing the main foreign sources of a carline's equipment, is necessary only if one or more foreign countries (i.e., countries other than the U.S./Canada) individually contribute at least 15 percent of the value of the carline's equipment. If there is one such country, the manufacturer must list that country and the percentage by value that originated in that country for the carline. If there are two such countries, the manufacturer must list those countries and the percentage by value that originated in those countries for the carline, in descending order of percentage. Manufacturers need not list more than two such countries. As with the first item on the label, much of the information that manufacturers need to calculate the information for the second item must come from parts suppliers.

NHTSA proposed a specific procedure in § 583.7 of the proposed regulation for determining major foreign sources of passenger motor vehicle equipment. The section specified the same procedure for determining the value of items of equipment as § 583.7, and also specified procedures for determining the country of origin of items of equipment and for determining the percentage of the total value of a carline's passenger motor vehicle equipment which is attributable to individual countries other than the U.S. and Canada.

NHTSA noted in the NPRM that the statute does not specify how country of origin is determined for purposes of item two on the label. The agency tentatively concluded that the simplest method would be to specify one country of origin for each item of equipment, using the country from which the greatest share of value originated for the item of equipment. The agency noted that this is the method that Congress prescribed for the only other country of origin calculation in section 210, i.e., country of origin for engines and transmissions in section 210(f)(12).

Ford commented that due to differences in calculation methods for U.S./Canadian and foreign content, it would be possible for the sum of the domestic and foreign label values of a vehicle to be either over 100 percent or zero percent, thereby causing confusion to consumers. That company suggested an alternative method for determining country of origin which, among other things, would attribute the total value of outside supplied equipment that contains less than 70 percent value added in the U.S./Canada to the country other than the U.S./Canada which contributed the greatest amount of value to that item. Ford stated that if the agency did not adopt its recommendation, it should clarify that the sum of U.S./Canadian content is considered one country, to preclude the classification of an item of equipment that is more than 50 percent U.S./Canadian to be classified as a foreign item of equipment.

Chrysler argued that the proposed regulation could result in an anomaly. It stated, among other things, that under the proposed method for determining country of origin, the country of origin could be the U.S. or Canada in

situations where U.S./Canadian content is less than 70 percent. Chrysler recommended an alternative method for determining foreign country of origin. The method would only consider passenger motor vehicle equipment that contains less than 70 percent valued added in the U.S./Canada, and would consider the foreign value of the equipment to be its value multiplied by the percent of content that originated outside of the U.S. and Canada.

Toyota stated that a "greatest share of value originated" test for purposes of item two on the label would represent a new and different test that is inconsistent with all other origin tests in use. Toyota stated that it believes that imposing this test would result in more work for suppliers with no benefit to the consumer. That company stated that if this test is used at all, it should be confined to instances in which the country of origin of passenger motor vehicle equipment, as determined for Customs purposes, is unknown and cannot be determined.

BMW commented that with regard to foreign parts content calculations and country of origin certification, NHTSA should incorporate an alternative means to allow manufacturers with existing, substantial business records to use these records as proof of foreign content to comply with the requirements. That company argued that without such an alternative, NHTSA would be imposing an unnecessary burden which would be increased further due to language barriers. BMW stated that it already has a system in place to handle customs duties and preferential treatment of goods with Germany and the EC jurisdiction which provides information on more than 400,000 active BMW parts. That manufacturer stated that by using the parts database and by inputting the appropriate parameters for a given group of vehicles, it can receive information that could be utilized to complete the calculations for the foreign parts content of Item Two on the label. BMW stated that while the wording of the definition of country of origin for customs purposes does not match the language in the NPRM verbatim, the practical use of either definition essentially would be the same for calculating the foreign content of Item Two. BMW acknowledged that circumstances would not be precluded where the country of origin would be different given the two definitions, but argued that these exceptions will not influence the accuracy of the calculated percentages.

After considering the comments, the agency has decided to make changes in § 583.7 to prevent the possibility that the specified U.S./Canadian content and major sources of foreign content for a carline will together exceed 100 percent and to provide greater flexibility concerning determination of country of origin for purposes of item two of the label.

As discussed above, the first two items on the label provide parts content percentages for the U.S./Canada and for up to two major sources of foreign parts content. For example, a label might indicate the following parts content percentages: U.S./Canada, 50%; Japan, 20%; and Mexico, 15%. Since the label does not purport to indicate all sources of content, the percentages are not expected to add up to 100%. However, the agency agrees that consumers would be confused if the numbers added up to more than 100 percent.

One way to prevent the numbers from adding up to more than 100 percent would be to specify a procedure for determining country of origin for item two of the label that is more closely tied to the statutory method for determining U.S./Canadian content. However, such a procedure would necessarily be very complicated, given certain aspects of the procedure for determining U.S./Canadian content, e.g., the roll-up, roll-down provision for outside suppliers.

The agency has therefore decided to simply specify that if the U.S./Canada and major foreign source percentages add up to more than 100 percent, the foreign source percentages are proportionately reduced to the extent necessary to bring the percentages down to 100 percent. The U.S./Canada percentage is not changed. The agency believes that this is the more important of the two items of information for consumers, and the method for determining the U.S./Canada percentage, unlike the methodology for major foreign source percentages, is explicitly set forth in the statute.

Since section 210 provides a specific methodology for determining the U.S./Canada percentage, the § 583.7 procedures have the limited purpose of providing a method for calculating the extent to which the *remaining* percentage is attributable to foreign countries which individually contribute at least 15 percent of the parts content, and the specific percentage attributable to each such foreign country.

Given that the U.S. and Canada are treated together in determining the U.S./Canada content, the agency agrees with Ford that they should also be treated together in making determinations under § 583.7. Beyond that, however, NHTSA believes that since the statute does not specify a particular method for making the country of origin determinations for item two of the label, and given the limited purpose of these determinations, manufacturers should be permitted greater flexibility. The agency is therefore specifying that, in making country of origin determinations for item two of the label only, manufacturers may use the greatest share of value approach or any other approach that is used for customs (U.S. or foreign) purposes, so long as a consistent methodology is employed for all parts and so long as the U.S. and Canada are treated together.

NHTSA notes that regardless of what approach a manufacturer selects for making country of origin determinations for item two of the label, it will have no effect on the specified U.S./Canadian content of a carline. Assume, for example, that an outside supplier provides equipment with 65 percent U.S./Canadian content. Under the roll-up, roll-down provision, the equipment is considered 0 percent U.S./Canadian for item one of the label. Under the greatest share of value approach and possibly under other approaches, the equipment would be considered U.S./Canadian for item two of the label. However, this would merely mean that the equipment does not show up in the percentages attributable to Japan, Germany or some other foreign country in the item two calculations; it would never be reflected as U.S./Canadian on the label.

NHTSA does not agree with the specific approaches recommended by Ford and Chrysler. The agency believes that both approaches are unnecessarily complicated. The agency also notes that the Ford approach would result in country of origin determinations being made on a very small percentage of value for items with substantial, but less than 70 percent, U.S./Canadian content.

5. Procedure for Determining Country of Origin for Engines and Transmissions (Section 583.8)

As discussed in the NPRM, the fourth and fifth items on the label, the countries of origin for the engine and transmission, are also determined separately for each vehicle, instead of on a carline basis. The information needed to make these determinations also needs to come from suppliers.

Section 210(f)(12) states that the "country of origin" of an engine or transmission is the country that contributed the greatest percentage of dollar value to the engine or transmission, based upon the purchase price of direct materials received at the individual engine or transmission plant. It also states that the U.S. and Canada are to be treated separately for

determining the country of origin. Thus, the country of origin might be the U.S. or Canada, but could not be U.S./Canada.

NHTSA explained in the NPRM that the term "direct materials" is not defined in section 210 of the Cost Savings Act. The agency referred to similar terms in the CFTA to assist it in defining the term, and tentatively concluded that the term "direct materials" refers to the items (i.e., the materials) that make up the final good (either an engine or a transmission), but does not include the "costs" (i.e., items such as labor) that go into assembling the final good. Those "costs" are not "materials." Further, they are not "received at the individual engine or transmission plants." (Emphasis added.)

NHTSA therefore concluded that, in calculating the country of origin for engines and transmissions, the country to which the engine or transmission is attributed is that country in which the greatest percentage by value was added, based on the purchase price of all equipment that makes up the completed engine or transmission. In addition, the country of origin calculation is based on the purchase price an engine or transmission supplier pays for all equipment it receives at the plant at which the engine or transmission is assembled into a completed unit. Based on the language in section 210(f)(12), costs incurred once the engine or transmission supplier has received the equipment at its engine or transmission assembly plants (e.g., labor costs, depreciation of equipment, insurance, etc.) are not permitted to be taken into account for purposes of determining the country of origin of an engine or transmission.

The agency recognized that some engine/transmission suppliers may produce their own equipment that is integrated into the fully-assembled engine/transmission. NHTSA requested comments on whether such "on-site" production should be treated similarly to on-site production at a manufacturer's final assembly point, i.e., by including all costs related to the production of such components, including labor.

The agency stated that under such an approach, for engine suppliers, production that occurs on-site prior to the point at which the engine parts are assembled to the engine block would not be considered "engine assembly," and non-parts costs would be taken into account in determining the value of the engine in order to determine its country of origin. After that point in the process, assembly and other non-parts costs would be disallowed. For transmission suppliers, production that occurs on-site prior to the point at which the transmission parts are assembled in the transmission casing (or transmission housing) would not be considered "transmission assembly," and non-parts costs would be taken into account in determining the value of the transmission in order to determine its country of origin. Again, after that point in the process, assembly and other non-parts costs would be disallowed.

NHTSA proposed a specific procedure in § 583.8 of the proposed regulation for determining country of origin for engines and transmissions. NHTSA noted in the NPRM that while the proposed regulatory text did not reflect taking parts production costs at the engine or transmission plant into account in determining country of origin for the engine or transmission, the agency might, depending on the comments, adopt such an approach in the final rule.

a. Assembly costs. AAMA stated that it agrees that the statute provides that determination of country of origin for engine and transmission does not include the cost of assembling and fabricating the engine or transmission.

Toyota, however, stated that it disagrees with this conclusion. That manufacturer argued that the statute does not expressly require such exclusion, and the Act's use of the words "dollar value added" in the first sentence of section 210(f)(12) connotes that the cost of assembling the engine or transmission is to be included. Toyota stated that it recognizes that the third sentence in (f)(12) provides that the estimate of value is based on the purchase price of direct materials, but argued that the sentence does not require that the estimate be based solely on the value of direct materials. Toyota urged the agency to interpret this section based on what it considers to be the plain meaning of both of these sentences, under which materials are a component of the value added calculation but not the sole component.

Mitsubishi argued that exclusion of the cost of labor required to build or assemble engines and transmission is not consistent with other provisions of the regulations, and the value of labor should therefore be included. That manufacturer stated that since the term "direct materials" is not defined in the AALA, the agency should use its discretion to interpret the undefined and vague language in a manner that is consistent with the rest of the Act.

JAMA also argued that assembly labor for engines and transmission should be included in the country of origin label calculations. That organization stated that if NHTSA believes that the statute precludes such inclusion, the agency should provide in the final regulations a clear disclaimer statement to that effect. JAMA stated that this could be accomplished by adding a sentence to the explanatory note or a parenthetical to the label following the words country of origin.

After considering the comments, NHTSA concludes, based on the language in section 210(f)(12), that determination of country of origin for engine and transmission does not include the cost of assembling and fabricating the engine or transmission. The agency does not accept Toyota's argument about the first and third sentences of (f)(12). Since the third sentence expressly provides that "(t)he estimate of the percentage of dollar value shall be based upon the purchase price of direct materials as received at the individual engine or transmissions plants of engines of the same displacement and transmission of the same transmission type," it limits the meaning of the term "value added" in the first sentence.

The agency also does not agree that significance should be accorded the fact that (f)(12) does not expressly provide that the estimate must be based solely on the value of direct materials. A basic rule of statutory construction provides that where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions. See Sutherland Stat Const § 47.23 (5th Ed). Since (f)(12) provides that the estimate is to be based on the value of direct materials received at the individual engine or transmission plant, other items such as assembly costs are excluded in making estimates.

NHTSA disagrees with Mitsubishi's argument that exclusion of the cost of labor is inconsistent with the rest of the regulation. The agency notes that § 583.8 applies *only* to the determination of country of origin for engines/transmissions for purposes of items four and five on the label; the cost of labor in assembling engines and transmissions is not excluded for purposes of determining U.S./Canadian parts content and major foreign sources of foreign content (items one and two of the label). NHTSA also notes that the exclusion of labor and assembly costs in determining the country of origin for engines/transmissions is directly analogous to the exclusion of final assembly costs in determining U.S./Canadian parts content and major foreign sources of content. The agency

also disagrees that the term "direct materials" is so vague that it can be interpreted to include labor in assembling the equipment received at engine/transmission plants into engines/transmissions.

NHTSA has, however, decided to specify the addition of the word "parts" after "engine" and "transmission" on the label. The agency believes that this will make it clear to consumers that these country of origin determinations exclude assembly costs. Because this change involves adding only two words to the label, it will not result in an information overload for consumers or an unnecessarily long label. NHTSA believes that this change is consistent with the statutory directive that the regulations provide to the ultimate purchaser of new passenger motor vehicles the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on manufacturers.

b. Parts that are produced at engine and transmission plants. AAMA recommended that the regulation provide that "(a)ll value added at the transmission and engine plant is excluded from the calculation of origin." APMA stated that the agency asked whether it should include non-parts costs of on-site production prior to the point at which engine parts are assembled to engine block or transmission parts are assembled in the transmission casing. APMA stated that it supports the regulation as drafted, which does not include non-parts costs for on-site production, as being the only approach consistent with the statutory language.

A number of other commenters, however, urged that "on-site" production of parts at an engine/transmission plant should be treated similarly to on-site production at a manufacturer's final assembly point, i.e., by including all costs related to the production of such components, including labor. Honda stated that it strongly supports inclusion of costs of in-house production of parts and subcomponents that are subsequently integrated into the engine or transmission during final assembly. It also stated that the agency's proposed definition of *final assembly point* for the engine (the point at which the engine parts are assembled to the engine block) and the transmission (the point at which the transmission part are assembled in the transmission casing or housing) seems appropriate.

Nissan stated that it agrees that in-house parts and components production should be included as parts content in determining country of origin for engines and transmissions. It also stated that, as proposed, final engine assembly should be designated to begin at the point in the production process when the block and head are joined, and that for transmissions, final assembly should be designated to begin at the point in the production process at which transmission parts are assembled in the transmission casing.

Toyota stated that because an assembled engine block is not equivalent to an engine (for any piston engine, gasoline or diesel, there must also be a cylinder head), it recommends that the point of engine assembly should occur no sooner than the point at which the block and head are attached to one another. That commenter stated that assembly labor prior to the attachment of the head to the block should not be excluded, as such labor constitutes, by definition, part of the value of the individual engine block and cylinder head, neither of which by itself constitutes an engine.

BMW stated that it supports treating on-site production of engine and transmission parts in a similar manner to on-site production of parts at a manufacturer's final assembly plant. BMW added, however, that it believes the definitions for the starting points of final assembly for the engine and transmission need to be precise so that substantial variances cannot be achieved by modifying the assembly sequence.

After considering the comments, NHTSA has concluded that production of parts at an engine or transmission plant should be treated in a similar manner with respect to determining country of origin of the engine or transmission as the production of parts at a final assembly plant is treated with respect to determination of a vehicle's parts content. The agency notes that the basic value of an engine or transmission is not primarily related to either the costs of assembly or the costs of the raw materials, but is instead related to the costs of producing parts. If an engine or transmission plant was highly integrated and all parts were produced at the plant, a determination of country of origin that did not reflect the costs of producing parts would be based entirely on the costs of raw materials. The agency believes that such a determination would be of little meaning.

At the same time, however, the agency must give full effect to the congressional intent to exclude the costs of assembling engines and transmissions. NHTSA believes that the best way to accomplish this is to specify that all value added at the transmission and engine plant is excluded from the calculation of origin, with the exception of the costs of producing individual parts of the transmission/engine. Individual parts refers to the most basic level of parts used to assemble an engine or transmission and not subassemblies.

In addition to ensuring that engine and transmission assembly costs are excluded as required by section 210, the agency also believes that this approach is much clearer than the specific one discussed in the NPRM preamble. The agency believes it could be difficult or impossible to define the starting points of final assembly for the engine and transmission in ways that are appropriate for all manufacturers. NHTSA is particularly concerned that, under such an approach, manufacturers might be able to modify the assembly process in ways that would reduce the costs of assembling the engine/transmission to a nullity. This would be possible, for example, under the approach suggested by Toyota. Such a result would be inconsistent with the statutory requirement that engine and transmission origin determinations be made based on the costs of direct materials.

c. Other issues concerning determining country of origin for engines and transmissions. AAMA stated that § 583.8 refers to determining country of origin for each individual engine and transmission. That organization stated that this is inconsistent with section 210(f)(10)(B) of the statute, which specifies that the following groupings are used in determining the origin and value added of engines/transmissions: engines of the same displacement produced at the same plant and transmissions of the same type produced at the same plant. AAMA noted that neither the statute nor proposed regulation defines "type" of transmission. It suggested that transmission type be defined as follows: In determining the origin of transmissions produced in the same plant, a type should have the same characteristics: driveline, number of forward gears, controls, and layout.

AAMA also commented that the regulation should specify that country of origin is determined once a model year using same methodology as vehicles, except United States and Canada are treated separately. That organization also stated that the regulation should make it clear that calculation of origin of engine/transmission is different for determining overall U.S./Canadian content.

Honda stated that the proposed regulation does not address the appropriate groupings of engines and transmissions for purposes of calculating country of origin. It also noted that the proposed regulatory text refers to a separate country of origin determination for each individual engine and transmission, and argued that this is not contemplated by the Labeling Act and would be extremely burdensome.

Honda stated that it believes the statutory groupings in some cases may be broader than appropriate to give meaningful information to consumers. It cited the example of an engine that is available in two types, both of same displacement and both manufactured at same plant, one of which is supercharged and the other standard. Honda stated that the two engines may have very different parts sources. Honda suggested that final rule provide manufacturers discretion to make country of origin determinations for engine and transmission subgroupings within the statutory grouping framework.

NHTSA agrees with the commenters that section 210 requires country of origin determinations for engines and transmissions, for items four and five of the label, to be based on groups of engines. The agency also agrees with AAMA's suggested definition for transmission type. For purposes of consistency and clarity, the agency believes it is more appropriate to provide a definition than simply leave subgroupings to the discretion of the manufacturer. The final rule reflects these changes. The agency does not agree that it is appropriate to permit subgroupings of engines below the level specified in section 210, since the statute specifies the groups to be used.

As part of the procedure for determining country of origin for engines and transmissions (for purposes of items four and five of the label only), the agency is specifying a similar procedure for determining country of origin of the components that comprise the engine/transmission as for making country of origin determinations for item two of the label, i.e., manufacturers may use the greatest share of value approach or any other approach that is used for customs (U.S. or foreign) purposes, so long as a consistent methodology is employed for all parts. The U.S. and Canada, however, are treated separately for making these determinations.

Since the statute does not specify a particular method for making country of origin determinations for the components comprising an engine/transmission, NHTSA believes that this approach will provide appropriate flexibility. The agency notes that after country of origin determinations are made for each component comprising an engine/transmission, the "greatest share of value added" approach is used to determine the origin of the engine/transmission. The agency also notes that this approach will not have any effect on item one of the label.

B. Format/Location for Label

NHTSA proposed to require that the label be placed in a prominent location on each vehicle where it can be read from the exterior of the vehicle. The agency proposed three options for the format of the label: (1) A stand-alone label that is at least 5 inches wide by 3 inches long, (2) an addition at the end of the Monroney pricing label (15 U.S.C. 1232), or (3) an addition at the end of the fuel economy label (15 U.S.C. 2006). Under all three options, the label would be required to read as follows:

For vehicles in this carline:
U.S./Canadian Parts Content: ____%
Major Source of Foreign Parts Content: [fill in country/countries]: ____%
For this vehicle:
Final Assembly Point: _____
Country of Origin:
Engine: _____
Transmission: _____

In addition, the label would include the heading "PARTS CONTENT INFORMATION" at the top, and an explanatory note at the bottom. The second item of the label (i.e., "Major Source of Foreign parts Content") would be omitted if no individual country other than the U.S./Canada contributed a minimum of 15 percent of the value of a vehicle's equipment.

NHTSA stated in the NPRM that to ease comparisons among various carlines and to make the information available to consumers in as clear and consistent a manner as possible, it believed it was appropriate to specify minimum requirements for label and letter size. The agency noted that the label, whether separate or attached to the price or fuel economy labels, must be large enough for all the content information to be easily read, yet small enough to avoid cluttering the limited window space on the vehicle. The agency proposed to require a separate label to be rectangular with a minimum dimension of 5.0 inches (125 mm) in width and 3.0 inches (75 mm) in length. The characters for items one through five of the parts content label would be required to be printed at a minimum height of 12 points (one-sixth of an inch) in boldface type. The required explanatory note at the bottom of the label would be required to be printed in characters two points smaller than the information for items one through five.

If the information required by section 210 is attached to the price or fuel economy labels, the information would be required to be separated from the information required to be on those labels by a line that is a minimum of 3 points wide. The words "PARTS CONTENT INFORMATION" would be required to be printed in bold, uppercase letters, centered, and in not less than 12 point type.

AAMA stated that the agency should permit the label information on any prominently displayed window label. That organization stated that as various government agencies add more labeling requirements, many companies have been developing consumer labels containing information on several different issues. On the issue of format, AAMA stated that because of increasing labeling requirements such as bumper standards and CFC content, deviations should be permitted with the prior approval of the agency.

GM stated that label space is at a premium, especially for labels which are required to be left in place until delivery. That manufacturer stated that the information required on the label is specifically set out in the legislation, and additional information should not be required. GM also argued that the label location, format, size, appearance and type style should be discretionary with the manufacturer to give the manufacturer the greatest flexibility. GM indicated that it intends to include this label information in a consumer information label combining several consumer notices on one label, including such things as bumper system performance information. GM stated that the regulation should allow consolidation of this label with other consumer notices as part of another window label displayed for consumer review at time of sale.

GM stated that in its combined consumer information label format, a title size of 12 points with the label information printed in characters two points smaller would make the label consistent with the other information. That manufacturer argued that in no case should the type size be larger than 12 points. GM stated that type size changes and bolding are more practical for implementing emphasis than underlining. According to GM, to maximize use of label space, the format should be discretionary, not mandated. That company stated, for example, that various information should be allowed

on the same line if width permits to save label space. GM also argued that the title line should be "Content Information" to comply with the disclosure intent of the Labeling Act.

Toyota stated that a separate Labeling Act label should not be required to be placed on the same window as the Monroney label. That company stated that section 210(b) does not require such placement and provides only that the label appear in a prominent place. Toyota also stated that the proposed 3 x 5 inch minimum size requirement for a separate label would pose problems concerning placement on some vehicles for which available space is limited. It noted that a manufacturer choosing to place the information on the Monroney label will be able to devote less space to Labeling Act disclosures than the 15 square inches of a 3 x 5 inch label. Toyota stated that for the sake of consistency, a separate label should not have to be substantially larger than the available space on the Monroney label.

NADA urged the agency to allow manufacturers to set out parts content information in the certification label required by 49 CFR part 567. That organization argued that a vehicle's right door frame is a prominent place and that nothing in the Act requires parts content labels to be affixed to vehicle exteriors. NADA also stated permanent attachment would provide information to subsequent purchasers.

NADA stated that the agency should prohibit the affixing of any separate parts content labels on the vehicle window. That organization stated that new vehicle windows are already cluttered with the Monroney and fuel economy labels. It also stated that vehicles in demonstrator service must also have used car rule warranty labels affixed. NADA stated that, by law, only used car rule labels may be removed during test drives. It noted that many state laws regulate vehicle window obstruction, but Federal law requires Monroney and fuel economy labels to be maintained. NADA stated that the agency, consistent with its primary mission to ensure vehicle safety, must not exacerbate this concern by allowing the potential for an additional window label.

After considering the comments, NHTSA has decided to require the label to be placed in a prominent location on each vehicle where it can be read from the exterior of the vehicle with the doors closed. NHTSA does not accept NADA's recommendation to permit the label to be included as part of the certification label on the door frame. The agency disagrees that the door frame would be a prominent location for a consumer information label, since prospective purchasers would need to open the door of a vehicle, and probably have to stoop down as well, to read the label.

NHTSA does not believe that it would be appropriate to prohibit stand-alone labels from being affixed to vehicle windows. Section 210 expressly provides that the agency must permit manufacturers to use, among other options, a readily visible separate label. A window location is the most practicable location for consumer information labels since a label installed on the inside of the glass can be read from outside the vehicle, yet is also protected from the elements. In addition, affixing labels to exterior painted surfaces could damage the paint. While NHTSA recognizes the importance of driver visibility, it observes that since a stand-alone label would be very small, such a label could be placed in an area where it would have little or no impact on visibility. The agency notes, in response to Toyota's comment, that stand-alone labels are not required to be on the same window as the Monroney label.

The agency is adopting format requirements that are similar to those in the NPRM, but with some minor changes. The agency is requiring the heading "PARTS CONTENT INFORMATION" for all labels. The agency notes that the NPRM preamble suggested that the heading would only be required for content labels included as part of other labels. However, the agency believes that a heading is useful for all labels, since it draws attention to the information and identifies its purpose. The agency believes the word "parts" is appropriate for reasons discussed earlier in this preamble. NHTSA also notes that the wording of the explanatory note has also been changed and the word "parts" has been added after "engine" and "transmission," for reasons discussed earlier in the preamble.

NHTSA agrees that manufacturers should be permitted to include the content label as part of any larger labels meeting the specified location requirements, since this increases manufacturer flexibility without lessening the usefulness or visibility of the content information. The agency disagrees, however, that it should drop all of the proposed format and size requirements. Without such requirements, manufacturers might use fine print that is not easily read. Similarly, the agency believes that the label would be harder to read if multiple items of information were placed on the same line. NHTSA is not adopting the proposed requirement that certain information be underlined, since it agrees that the use of capital letters and bold type provides sufficient emphasis. The agency is adopting minimum type size requirements. The agency is not adopting any overall size requirement for a separate label, since it believes that the minimum type size requirements are sufficient to ensure that the content label will be visible and easily read.

C. Attachment of Label

NHTSA proposed to require manufacturers to affix the content label to each new vehicle before the vehicle is shipped from the final assembly point to the dealer, shipping agent, or importer.

Virtually all of the vehicle manufacturers requested more flexibility as to when the label must be affixed to the vehicle, and relied on the same basic arguments. They noted that section 210(b) does not expressly require manufacturers to attach the label but instead specifies that each manufacturer shall "cause to be affixed" the required label. The manufacturers also noted that section 210(c) specifies that manufacturers must be permitted the option of including the content information as part of the Monroney or fuel economy label, and indicated that, for imported vehicles, these labels are ordinarily affixed at the port of entry, a distribution center or the dealership.

Some of the manufacturers requested that the label be required to be affixed prior to the delivery of a vehicle to the dealership. AAMA requested that the label be required to be affixed prior to a motor vehicle being "offered for sale to an ultimate purchaser." Ford commented that some vehicles which are shipped to dealers prior to introduction dates are only consigned to the dealer, and the dealer does not take possession until the vehicle is invoiced.

In response to an inquiry from NHTSA concerning when Monroney labels are affixed, the Justice Department noted that manufacturers are required by statute, "prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date" to affix the Monroney label. That Department noted that the language requiring the Monroney label be affixed "prior to the delivery" is straightforward and places the responsibility squarely on the manufacturer. With respect to the "introduction date" exception, however, the Justice Department indicated that models are introduced at varying times and vehicles may sometimes arrive at a dealership several months ahead of the

"introduction date" minus the Monroney labels. The Department stated that this makes compliance problematic at times and raises enforcement issues that NHTSA may wish to consider.

After considering the comments, NHTSA has decided to generally require labels to be affixed prior to the delivery of a vehicle to the dealer, but to provide an exception for vehicles delivered to dealerships prior to introduction dates. The agency believes it is desirable for labels to be present on vehicles when they are delivered to the dealership, since consumers may see such vehicles at any time after such delivery. There is no reason to require the labels to be affixed any earlier, such as at the final assembly plant, since consumers will not see the vehicles prior to their arrival at the dealership. Since the Labeling Act provides that manufacturers may include the content information as part of the Monroney label, the agency believes it is appropriate to provide the same "introduction date" exception as is provided for Monroney labels.

D. Requirements for Suppliers and Related Ones for Manufacturers

As discussed above, much of the information that manufacturers need to calculate the required items for the label must come from suppliers. Section 210(d) specifies that the agency must issue regulations which include provisions applicable to outside and allied suppliers to require such suppliers to certify whether equipment provided by such suppliers is United States, U.S./Canadian or foreign and to provide such other information as may be necessary to enable the manufacturer to reasonably comply with the provisions of section 210 and to rely on such certification and information.

NHTSA proposed specific requirements for suppliers. In order to enable manufacturers to calculate the information required for items one and two of the label, i.e., the percentage U.S./Canadian content and major foreign sources of equipment, NHTSA proposed (§ 583.10) to require outside suppliers to provide the following information for any equipment they supply to a vehicle manufacturer or to an allied supplier:

(1) The price of the equipment to the manufacturer or allied supplier;

(2) Whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) For any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin for the equipment.

The agency proposed (§ 583.11) to require allied suppliers to provide the following information for any equipment they supply to a vehicle manufacturer:

(1) The price of the equipment to the manufacturer;

(2) The percentage U.S./Canadian content of the equipment;

(3) The country of origin of the equipment, i.e., the country in which the greatest percentage, by value (using purchase price), of value was added to the equipment.

Under the proposal, both outside and allied suppliers that directly supply vehicle manufacturers would be required to provide the specified information directly to the vehicle manufacturer, accompanied by a certification of the information's accuracy. Outside suppliers that directly supply allied suppliers would be required to provide the specified information and certification directly to the allied supplier. Suppliers would also be required to maintain records of the information used to determine the information provided to the manufacturers or allied suppliers.

The agency noted in the NPRM that since the information required for items one and two of the label must be calculated before the beginning of the model year, it is important that manufacturers and outside suppliers receive the required information in a timely manner. NHTSA proposed to require suppliers to provide the information by specified dates, based on typical model year production periods. The agency also proposed to require suppliers to base the information they provide on what they expect to supply during specified production periods. However, recognizing that manufacturers may establish different model year production periods for particular carlines, the agency proposed to permit manufacturers and suppliers to conclude agreements specifying alternative production periods and alternative times for providing the information to the manufacturer.

As discussed above, the information for items four and five of the label, i.e., countries of origin for the engine and transmission, is calculated for individual vehicles rather than on a carline basis. Under the agency's proposal (§ 583.12), suppliers of engines and transmissions would be required to provide the vehicle manufacturer with the country of origin for each engine or transmission it supplies to the manufacturer, i.e., the country in which the greatest percentage, by value (using the total cost of equipment to the engine or transmission supplier), was added to the engine or transmission. The agency proposed to require this information to be provided no later than the time the engine or transmission is delivered to the manufacturer.

NHTSA received numerous comments concerning the proposed requirements for suppliers. AAMA noted that the proposed regulation would require outside suppliers to provide a manufacturer or allied supplier content information for each unique type of equipment. It stated that the requirement should be limited to providing content data on those items of equipment requested by a manufacturer.

AAMA also noted that the proposed regulation would require suppliers' best estimates of price, content and origin for unique type of equipment expected to be supplied during a 12-month period. That organization stated that it believes it is highly unlikely that suppliers would be willing or able to release estimates "for future model year costs," as this information is confidential business information and suppliers may not be able anticipate changes that may be required to contract price during the year due to unforeseen design changes. AAMA suggested that to ease this potential point of friction between suppliers and manufacturers, it recommends that suppliers' best estimates of price, content and origin be based on the price which exists in the financial records of the manufacturer at the time when the content is calculated. That organization stated that if this information does not yet exist because the part is new, suppliers should be required to provide their best estimates of what the price, content or country of origin will be at start of production.

AAMA also stated that the proposed requirements would not provide manufacturers the data necessary to determine engine and transmission country of origin because they do not specify separate (as well as combined) U.S. and Canadian content for transmission and engine items of equipment. Information on a combined basis is needed for items one and two of the label; information on a separate basis is needed for items four and five of the label. Ford stated that since it is not always known if an item of equipment is going to be installed on an engine or transmission, and to reduce complexity, the separate and combined U.S. and Canadian content data should be obtained for all items of equipment. That manufacturer stated that this would also permit the basic information collected from suppliers to support Labeling Act requirements to be used for other reporting and analysis purposes.

A number of manufacturers argued that because carlines are not introduced on a rigid schedule, it would be difficult

or impossible for suppliers to adhere to the proposed timing schedule. AAMA stated that suppliers and manufacturers should be allowed flexibility to establish their own internal guidelines.

Nissan stated that since vehicle model changeovers may occur at varying times throughout the year, it urges NHTSA to specify that supplier content reporting requirement dates be negotiated by contract among suppliers and manufacturers rather than a date prescribed by regulations. BMW stated that it believes exact dates for suppliers should be left to agreements between the manufacturers and suppliers and, therefore, not included in the regulation. That company noted that the manufacturer has ultimate responsibility to provide a label on the vehicle. BMW stated that the manufacturer will require from its suppliers that information is received in a timely manner because without the information the vehicle cannot be sold.

Other vehicle manufacturers, including Toyota and Honda, also emphasized the need for manufacturer flexibility but stated that the agency's proposal to permit manufacturers and suppliers to conclude agreements specifying alternative production periods and alternative times for providing the information to the manufacturer would provide the needed flexibility.

APMA stated that if NHTSA adopts the AIAG format, requisite reporting would be jointly submitted by the outside supplier to the allied supplier or manufacturer. That organization stated that if the AIAG format is not adopted, it recommends (1) that a common reporting date be used for reporting to both allied suppliers and manufacturers, and (2) that an outside supplier's obligation to report be conditioned on the receipt of at least 90 days advance written notice from an allied supplier or manufacturer.

On the issue of supplier certifications, AAMA stated that since allied suppliers are wholly owned by the manufacturer, the manufacturer has control over the information as well as the timing required from suppliers. It stated that the information required of allied suppliers should be the same as for outside suppliers, but the certificate should be optional.

Toyota stated that it believes that "blanket certifications" should be authorized for use where a supplier's parts contain no U.S./Canadian content and where the country of origin of the equipment is indicated in ordinary business records.

After considering the comments concerning requirements for suppliers, NHTSA has decided to specify specific requirements concerning the information suppliers must provide manufacturers and allied suppliers, but with some changes from the proposal. First, the agency is persuaded by AAMA's comment that suppliers should only be required to provide content data on those items of equipment requested by a manufacturer or its allied supplier. NHTSA is therefore specifying that manufacturers must request the specified information from their suppliers for relevant motor vehicle equipment, and that the suppliers must provide the specified information in response to such request (or a request from an allied supplier). The agency believes that this approach offers two primary advantages: (1) Suppliers will not be required to provide unnecessary information, i.e., information that would not be used for parts content calculations, and (2) suppliers are less likely to have compliance problems from not knowing about the requirements of 49 CFR part 583 than in a situation where they did not receive a specific request for the required information. NHTSA also believes that, as a practical matter, manufacturers would in any event need to be contacting suppliers concerning such things as where to send the required information.

NHTSA is also persuaded that it is unnecessary to specify any specific calendar dates for suppliers to provide the information. The agency is simply specifying that manufacturers must request the information in time to enable them to calculate the information required on the label.

While the agency believes that it is generally appropriate to permit manufacturers and suppliers to work out timing and other details among themselves, it believes that a few simple requirements are necessary for the benefit of outside suppliers. Specifically, the agency is specifying the following requirements with respect to manufacturer and allied supplier requests for content information from outside suppliers: (1) The requester must indicate that the request is being made pursuant to 49 CFR part 583, and that the regulation is administered by the National Highway Traffic Safety Administration, (2) the requester must indicate that 49 CFR part 583 requires outside suppliers to provide specified information upon the request of a manufacturer or allied supplier to which it supplies passenger motor vehicle equipment and that, to the best of the requester's knowledge, the outside supplier is required to provide the requested information, (3) if any information other than that required by 49 CFR part 583 is requested, the requester must indicate which information is required by 49 CFR part 583 and which is not, and (4) the requester must indicate that 49 CFR part 583 specifies that while information may be requested by an earlier date, the outside supplier is not required to provide the information until the date specified by the requester or the date 45 days after receipt of the request, whichever is later. The agency is not specifying the specific language by which requesters must provide this information.

Since compliance by an outside supplier with 49 CFR part 583 is based upon providing information in response to a request from a manufacturer or allied supplier, the agency believes these requirements are necessary to protect outside suppliers. The requirements ensure that an outside supplier is aware that it is required by Federal regulation to provide the requested information, and that it knows the citation for the regulation and the agency which administers it. The requirements also ensure that outside suppliers will, in the event they receive requests for more information than that required by 49 CFR part 583, know which information is required by the regulation and which is not. Finally, the requirements ensure that outside suppliers will have adequate time to respond to the request. NHTSA notes that APMA recommended that the regulation specify notice of at least 90 days. However, that organization did not justify that amount of time. The agency believes that 45 days provides ample time, since today's final rule puts outside suppliers on notice that, from now on, they must provide the specified content information in response to requests from manufacturers and allied suppliers.

NHTSA believes that similar requirements are unnecessary to protect allied suppliers, given that allied suppliers are wholly owned by vehicle manufacturers. Also, any specific timing requirements as to when allied suppliers must provide requested information would be more complicated, since allied suppliers may need to request information of outside suppliers in order to provide the requested information.

With respect to AAMA's comment that certifications should be optional for allied suppliers, NHTSA notes that section 210(d) specifies that regulations "shall include provisions applicable to outside and allied suppliers to require such suppliers to certify whether a component provided by such suppliers

is United States, U.S./Canadian or foreign * * *." Therefore, the agency does not have the discretion to make certifications optional. NHTSA also observes that while allied suppliers are owned by manufacturers, they are nonetheless separate entities with independent legal obligations.

Given this statutory provision, the agency also cannot permit the use of ordinary business records instead of specific certifications from suppliers, as recommended by Toyota. The agency notes, however, that a certification can cover multiple items of equipment and can be part of documents containing other information. Suppliers may be able to incorporate the certification into other business records that they provide manufacturers.

The agency does not accept AAMA's suggestion that supplier estimates of price, content and origin for unique type of equipment not be based on a period of time generally corresponding to the model year for which content calculations are to be made. Estimates that are based on current production or on the start of production might be very different from what the supplier anticipates for the model year as a whole. For example, a supplier might plan to manufacture a part in both the United States and overseas, and to begin production in one place slightly before the other place. In such an instance, an estimate based on start of production would not be meaningful. In order to ensure meaningful label information, NHTSA believes that estimates must be for an overall production period that corresponds to the relevant model year. The agency emphasizes, however, that suppliers are only required to provide good faith estimates and are not prevented from making subsequent changes in price, content and origin for their equipment.

The final rule clarifies that suppliers are required to provide both separate and combined information concerning the U.S. and Canadian content of parts that may be used in engines or transmissions. With respect to Ford's suggestion that separate U.S. and Canadian content information be required for all equipment, NHTSA notes that it would be inappropriate for the regulation to require suppliers to provide information that is not relevant to Labeling Act requirements. However, manufacturers are free to request suppliers to provide such information outside the context of 49 CFR part 583.

The agency notes that additional issues related to supplier certifications are discussed below in the section entitled "Recordkeeping Requirements; Supplier Certifications."

E. Requirements for Dealers

NHTSA proposed to require dealers to maintain the label on each vehicle until the vehicle is sold to a consumer. The agency noted in the NPRM that AIADA had submitted a comment on the request for comments arguing that dealers should be permitted to remove the label from a vehicle if state law requires it, such as when dealers are operating demonstrator vehicles, or when dealers move cars in an intra-dealer exchange. AIADA had also recommended that dealers be permitted to affix duplicate labels in the event that the manufacturer-supplied label becomes torn or otherwise mutilated.

NHTSA addressed this issue as follows in the NPRM:

> NHTSA has tentatively concluded that dealers should not be permitted to remove the label for any reason before sale to a consumer. The agency believes that it is appropriate to treat this label in same manner as Monroney and fuel economy labels, since all three labels are intended to provide information to aid consumers in making their purchase decision. Neither the EPA or Department of Justice permit dealers to remove fuel economy or Monroney labels, even temporarily, prior to sale to a consumer. The Department of Justice has advised that neither the Monroney nor fuel economy labeling statutes contain exceptions for situations in which labels purportedly constitute safety hazards in demonstrator cars (i.e., those cars that dealers allow potential customers to test drive), and went on to state that it was unaware of any judicial interpretations that would create such exceptions. Section 210 is similar to the other two labeling statutes in that it does not grant NHTSA the authority to permit dealers to remove the label. Indeed, section 210(b)(1) states explicitly that each dealer shall cause the label required by this Act to be maintained on the vehicle.
>
> NHTSA is also concerned that, if dealers were permitted to remove labels for demonstrator vehicles, consumers would not have the labeling information available to them at a crucial time in their purchasing decision, i.e., the time they were evaluating a vehicle for purchase. In addition, the labels might be re-attached inadvertently to the wrong vehicle or not re-attached at all.
>
> The Department of Justice has advised that most manufacturers have been applying Monroney and fuel economy labels to the rear left windows of vehicles, and affixing the vehicles with labels that do not easily tear or loosen from the windows to which they are attached. Such placement does not ordinarily interfere with the driver's vision in the event of a test drive or other similar purpose. Additionally, the dealer could not easily remove the label, even for temporary purposes, without tearing or destroying it.
>
> NHTSA will not, therefore, propose to permit dealers to remove labels for any reason prior to a first sale to a consumer, with one exception: the agency agrees with the AIADA that it is necessary for dealers to replace any label that becomes mutilated or otherwise damaged prior to sale to a consumer so that the information is no longer legible. 58 FR 61053.

As discussed earlier in this preamble, NADA argued that existing labels including the Monroney and fuel economy labels create safety concerns for vehicles which are test driven prior to their delivery to first purchasers, because the labels obstruct visibility. Noting that the agency indicated in the NPRM that dealers would not be allowed to remove a parts content label except in the event that it becomes mutilated or damaged, that organization urged the agency to prohibit the placement of separate parts content labels on vehicle windows. NADA stated that the final rule should specify that dealers may remove labels prior to sale when instructed by a manufacturer to replace them with substitutes containing updated or corrected information. AIADA repeated its earlier argument that dealers should be permitted to remove the label from a vehicle if state law requires it, such as when dealers are operating demonstrator vehicles, or when dealers move cars in an intra-dealer exchange.

After considering the comments, NHTSA has concluded that there is no basis to change its view, discussed in the NPRM, that section 210 prohibits temporary removal of labels for test drives. The Justice Department concurs in this view. Section 210 specifically requires each dealer to "cause to be maintained, *on each such vehicle*," the required label. (Emphasis added.) Therefore, the required label must be maintained by dealers "on each * * * vehicle." Moreover, the similarity of the language in section 210 for the content label with that for the Monroney and fuel economy labels indicates that the same result should be obtained. The commenters did not present any legal analysis challenging the legal analysis presented in the NPRM or suggesting that the Justice Department analysis is incorrect.

The final rule does clarify that dealers may replace labels with substitutes containing corrected information when instructed to do so by a manufacturer. It is unnecessary to specify that labels may be replaced for updated information, since the information specified on the label is not subject to change (except for purposes of correction).

F. Authority To Exclude Vehicles With Low or High U.S./Canadian Content

NHTSA stated in the NPRM that, for vehicles with less than 35 percent U.S./Canadian content, it was considering

providing manufacturers with the option of simply stating that the percentage U.S./Canadian content is "minimal" instead of determining and providing the precise amount of such content. The agency addressed this issue as follows in the NPRM:

> Several manufacturers requested more limited labeling requirements for manufacturers of new passenger motor vehicles that contain minimal U.S./Canadian content. In effect, the label would state that the vehicle contained less than a certain percentage of U.S./Canadian content. It would also state the final assembly point, and the country of origin of the engine and transmission.
>
> Volvo suggested the simplified procedure be implemented for imported vehicles containing under 15 percent U.S./Canadian content. The AAMA agreed with the 15 percent level, stating that Congress appeared to indicate that higher percentages of U.S./Canadian content were significant for purposes of labeling. Volkswagen and the AIAM, however, suggested a level of 35 percent, stating that lower levels would not affect enough vehicles to make implementation of the special provisions worthwhile. Lamborghini, in its testimony at the public meeting in December 1992, suggested a cutoff of 20 percent.
>
> As a practical matter, NHTSA agrees that once the domestic content gets below a certain point, the precise amount of that content becomes immaterial, *i.e.*, the vehicle is foreign and small differences in domestic content are not likely to be relevant to consumer purchasing decisions.
>
> Therefore, for vehicles with less than 35 percent U.S./Canadian content, the agency is considering providing manufacturers with the option of simply stating that the percentage U.S./Canadian content is "minimal" instead of determining and providing the precise amount of such content.
>
> The primary benefit of this option would be to eliminate manufacturer costs associated with keeping precise records and making precise calculations about the U.S./Canadian content of a vehicle, when the manufacturer knows such content is very low. Under this option, manufacturers would still be required to provide items 2, 3, 4, and 5 of the label, *i.e.*, major foreign sources of vehicle equipment, place of final assembly and countries of origin of the engine/transmission. 58 FR 61053–54.

However, NHTSA also noted that such an option would represent a limited exclusion from one of section 210's labeling requirements. The agency stated that as part of considering this option, as well as possible special requirements discussed below for multi-stage and low volume manufacturers, it was in the process of determining whether it had authority to provide limited exclusions from section 210's labeling requirements. NHTSA stated that it would complete its evaluation before reaching a final decision about possible exclusions. 58 FR 61054.

In commenting on the NPRM, AAMA stated that it supported a limited exclusion for vehicles with low U.S./Canadian parts content, although at a 15 percent content level rather than 35 percent. AAMA also stated that since the agency "has implied that it has the authority to set a minimal level for the U.S. and Canadian content which removes a recordkeeping burden on the low end of content, it urged that such relief also be provided for the high end of content. That organization recommended that, for carlines with more than 85 percent U.S./Canadian content, manufacturers be permitted to specify the content as "at least" 85 percent instead of specifying a percentage.

The foreign vehicle manufacturers strongly supported a limited exclusion for vehicles with low U.S./Canadian parts content. However, several of them argued that unless the agency also permits a limited exclusion from providing the information required for item two of the label, i.e., the percentage parts content originating from major sources of foreign content, there would be only a minimal benefit from an exclusion from specifying the percentage U.S./Canadian parts content. This is because the foreign manufacturers would have to collect detailed information from most of their suppliers to calculate the information for item two of the label. The foreign manufacturers suggested various alternative approaches, such as requiring them to specify the countries that constitute major sources of foreign content but not the percentages from such countries.

Since publishing the NPRM, the agency has completed the analysis of its authority to provide exclusions from the Labeling Act requirements. For reasons which are summarized below, NHTSA has concluded that it does not have the authority to provide exclusions from the express statutory labeling requirements for either vehicles with low U.S./Canadian content or vehicles with high U.S./Canadian content. As discussed in the next section of this preamble, however, the agency may provide limited exclusions for multi-stage manufacturers and low volume manufacturers, based on the *de minimis* doctrine.

As discussed above, the Labeling Act expressly requires manufacturers to label each vehicle with five items of information: (1) The "*percentage*" U.S./Canadian parts content; (2) the names of foreign countries providing at least 15 percent of the parts content and the "*percentage*" for each such country; (3) final assembly point; and (4) and (5) countries of origin for the engine and transmission. Items (1) and (2) are calculated on a "carline" basis. See section 210(b)(1).

There is a limit to the degree of precision in the percentages required by the Labeling Act. Section 210(b)(2) provides that "[t]he percentages required to be indicated by this section may be rounded to the nearest 5 percent by the manufacturers."

To implement these and other requirements, section 210(d) requires the Secretary to:

> Promulgate such regulations as may be necessary to carry out this section * * * Such regulations shall provide to the ultimate purchaser of a new passenger motor vehicle the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers.

The Labeling Act does not provide any express authority to create exclusions from the statutory requirements which apply to vehicle manufacturers. NHTSA notes that while section 210(d) provides that the regulations must not impose costly and unnecessary burdens on manufacturers, this is not an invitation for the agency to second-guess Congress about the requirements it has established regarding the specific content information which must be provided to consumers. As a matter of statutory construction, the agency notes that general provisions cannot be construed as overriding specific ones. Since all of the exclusions identified above are inconsistent with the statutory language, the relevant legal question is whether NHTSA has implied authority to create the exclusions notwithstanding such language.

Where a statute does not provide express authority to create exclusions, there are only two circumstances recognized by the courts in which an agency has implied authority to create exclusions. The first is administrative need, related to an agency's inability to carry out a mandate fully, and the second is *de minimis* circumstances, where following the plain meaning of a statute would lead to "absurd or futile results" or to "a gain of trivial or no value." The courts indicate that both bases for exclusions from the clear command of a statute are disfavored and that agencies bear a strong burden of proof in attempting to show that adhering to a statute would have the effects described above.

Since exclusions are not necessary for the agency to carry out its mandate, the

only relevant issue is whether the exclusions can be justified on the *de minimis* theory. The exclusions cannot be justified if non-trivial benefits are provided by a regulation in those circumstances.

NHTSA has concluded that it does not have authority to provide the above-discussed exclusions from the express statutory labeling requirements for either vehicles with low U.S./Canadian content or vehicles with high U.S./Canadian content because the exclusions would permit the labels on a substantial portion of the vehicles sold to provide the consumer with significantly less information than Congress intended, thereby eliminating much of the benefit that the Labeling Act was intended to provide.

For example, a "low-end" exclusion would permit a large percentage of foreign vehicles to be labeled with the words "minimal" or less than 35 percent (or some other specified percentage) U.S./Canadian content, instead of being labeled with a specific percentage. Consumers would not know whether vehicles bearing such labels contained (on a carline basis) 0 percent, about 15 percent, or possibly even nearly 35 percent U.S./Canadian content. A consumer wishing to make a purchase decision among vehicles bearing such labels would not be able to compare their U.S./Canadian content. Similarly, a "high-end" exclusion would permit most domestic vehicles to be labeled with the words "greater than 85% U.S./Canadian content." A consumer wishing to make a purchase decision among vehicles bearing such labels would not be able to compare their U.S./Canadian content.

NHTSA notes that section 210(b)(2) allows rounding of the percentages, but limits the rounding "to the nearest five percent." This indicates that specific percentages must be listed (since general percentages aren't amenable to rounding) and that any rounding to a greater degree is prohibited. In this regard, it is particularly important to note that the degree of permissible rounding permitted by the enacted version of section 210 is significantly less than the degree that would have been permitted in the introduced version. In the introduced version, rounding would have been permitted to the nearest 10 percent. The enacted version permits rounding only to the nearest 5 percent. Thus, Congress focused particular attention on the issue of rounding and decided to adopt strict limits. Moreover, implicit in the enacted rounding provision is a judgment by Congress that differences in content of as little as five percentage points are significant enough to be considered by the consumer.

As discussed above, several foreign vehicle manufacturers requested an exclusion from the statutory requirement to specify the percentage parts content originating from major sources of foreign content. Volkswagen stated that its recommendation for such an exclusion is "consistent with the intent of the original bill," but recognized that the statutory requirement to list the percentage parts content originating from major sources of foreign content was added by the House/Senate Conference Committee. Volkswagen argued that "the Committee did not appear to have assigned great importance to the inclusion of foreign sourced parts percentages."

NHTSA notes that it must implement a statute as finally passed by the Congress, and not an earlier version that was not passed. Moreover, the agency must follow the plain meaning of a statute and cannot ignore express statutory requirements based on a belief that a Congressional committee may not have assigned great importance to a particular requirement. The committee, and ultimately the Congress, thought the requirement at issue was important enough to pass into law. Congress decided that prospective purchasers should know the percentage parts content that originated from major sources of foreign content. This particular requirement primarily applies to foreign vehicles, since domestic vehicles are less likely to have major sources of foreign content. Yet, the exclusions recommended by the foreign manufacturers would permit a large percentage of foreign vehicles to labeled without this information. Such exclusions cannot be considered *de minimis*. The agency does observe that the additional flexibility it is providing with respect to how country of origin is determined for purposes of item 2 of the label should help reduce manufacturer costs in this area.

G. Multi-Stage Manufacturers and Small Businesses

NHTSA proposed to exclude multi-stage manufacturers of "carlines" of fewer than 1,000 vehicles from providing items 1 and 2 of the label (the two items that are determined on a carline basis). However, these manufacturers would be required to provide items 3, 4 and 5 of the label. Similarly, the agency proposed to apply the same limited requirements to businesses that produce a total of fewer than 1,000 passenger motor vehicles for sale in the United States annually.

The agency explained that the concept of carline is largely meaningless for many multi-stage manufacturers. Many of the vehicles made in the multi-stage process are highly specialized, and are often built to order. A "carline" in this instance could consist of only several vehicles. The agency stated that it did not believe that Congress had this situation in mind when it defined carline. Moreover, to the extent that vehicles are built to order, prospective purchasers may not be able to inspect a content label prior to making a purchase decision. NHTSA also stated in the NPRM that it believes that the same arguments made concerning multi-stage manufacturers, regarding carlines with a minimal number a vehicles produced annually, can be made in a discussion of small businesses.

In its discussion of multi-stage vehicles, the agency noted that alterers are not covered by section 210 for reasons similar to those discussed above concerning dealer and port-installed options. Alterers modify completed vehicles, after they have left the manufacturer's final assembly point. The parts they use are not considered equipment by section 210 of the Cost Savings Act, because they are never shipped to the final assembly point. Their modifications cannot affect carline-basis calculations made before the start of the model year, and cannot be known in advance of the model year by the manufacturer.

NTEA stated that it agrees with agency's tentative determination that the label on vehicles produced in multiple stages should differ from the label on mass produced vehicles. It also stated that it is confident the agency has authority under the Labeling Act to promulgate different rules, and believes the Act could be interpreted to allow even a full exclusion for multi-stage vehicles. NTEA stated that requiring small business multi-stage manufacturers to calculate U.S./Canadian versus foreign percentages would be extremely burdensome in both an economic and practical sense as they would need to do so on a per vehicle basis. That organization added that any ancillary reporting or recordkeeping requirements would also need to be done on a per vehicle basis. NTEA noted that the proposed multi-stage rules would require information on final assembly point and place of manufacture of the engine and transmission. That commenter stated that this would allow a consumer to know where the vehicle was built and whether the most valuable individual mechanical components, the engine and transmission, are of foreign or domestic

origin. NTEA also stated that the burden on small business multi-stage manufacturers would be minimal.

AIAM stated that it applauds NHTSA's recognition of providing some regulatory relief to small automotive manufacturers. It suggested that the agency expand the proposed exclusion for small manufacturers from fewer than 1,000 vehicles to fewer than 2,500 vehicles. That organization stated that this would provide relief from the costly burdens the Act imposes on additional small manufacturers without depriving consumers of information deemed necessary by the Act.

Coachmen stated that the "concessions" made in the NPRM fall far short of what was requested by RVIA in commenting on the request for comments. Coachmen argued that the proposed requirements would impose an undue and costly and unnecessary burden on Coachmen. It recommended that the final rule should exclude carlines of less than 20,000 per year, exclude recreation vehicle manufacturers and van converters, or, as a less desirable alternative, provide simplified and less costly compliance recordkeeping and reporting requirements based on using the information provided solely by the original vehicle manufacturer on a pass through basis. Coachmen stated that it has several divisions, some of which are final stage manufacturers and others van converters. It stated that the process of documenting and re-computing percentage of domestic content of vehicles would require large amounts of paperwork, additional labor and possible delays in shipments, but result in a minuscule change in the original vehicle manufacturer's domestic content.

Coachmen stated that the motor vehicles it receives for further manufacture are supplied by the Big Three, which Coachmen assumed would have a domestic content label affixed to the incomplete vehicle. That company argued that individual per unit costs of implementation would be significantly higher than for the Big Three, creating a competitive disadvantage. Coachmen argued that the intent of the legislation relates to large volume producers, and that regulations should not be extended to multi-stage manufacturers, final stage manufacturers or van converters. That company stated that in addition to the interpretation as to the types of vehicles to be included, the issue of what constitutes a carline should be redefined. Coachmen stated that by using the figure of 1,000 vehicles per year as the upper limit of applicability, NHTSA has not considered the intent of the legislation. Coachmen noted that it has a van conversion division whose annual production is a small fraction of the total market but does exceed the 1,000 unit limit by a considerable amount.

After considering the comments, NHTSA has decided to exclude all final stage manufacturers, as well as all businesses that produce a total of fewer than 1,000 passenger motor vehicles for sale in the United States annually, from providing items 1 and 2 of the label (the two items that are determined on a carline basis). However, these manufacturers are required to provide items 3, 4 and 5 of the label.

The agency believes that these exclusions are justified on the *de minimis* theory, i.e., only trivial additional benefits would be provided by not adopting the exclusions. First, NHTSA believes that the total number of vehicles affected by the exclusions is less than one percent of the vehicles covered by the statutory requirements. This is very different than the "low end" and "high end" exclusions considered above, which would each affect a large percentage of total vehicles. Second, these exclusions largely affect vehicles which are likely to be made to order and for which consumers would often not be able to inspect a label prior to making a purchase decision. Thus, even if full labeling information was provided for these vehicles, it often could not be used by consumers in making purchase decisions.

NHTSA disagrees with AIAM's suggestion that the exclusion for small manufacturers be changed to apply to manufacturers which produce fewer than 1,000 vehicles to ones which produce fewer than 2,500 vehicles. As discussed above, the agency's implied authority to provide exclusions from express statutory requirements is very limited. It is the agency's judgment that the proposed limit is sufficient to cover small manufacturers which are likely to only produce vehicles to order and for which consumers are unlikely to be able to inspect a vehicle label (e.g., on a demonstrator vehicle) prior to making a purchase decision. Moreover, the concerns about carline determinations being made for only a few vehicles are not likely to be relevant. In short, the agency believes that AIAM's recommended exclusion cannot be justified on the *de minimis* theory. Extending the scope of the exclusion would unnecessarily deny prospective vehicle purchasers relevant content information that Congress decided they should have.

For the same reasons, NHTSA is not adopting Coachmen's recommendation that the final rule exclude carlines of less than 20,000 per year and exclude recreation vehicle manufacturers, i.e., the exclusions would unnecessarily deny prospective vehicle purchasers relevant content information that Congress decided they should have. With respect to that company's recommendation that the final rule exclude van converters, NHTSA notes that many van converters are excluded as a result of being alterers.

However, NHTSA has decided to exclude all final stage manufacturers from the requirements to provide items 1 and 2 on the label, rather than limiting the exclusion to multi-stage manufacturers of "carlines" of fewer than 1,000 vehicles. The reason for this relates both to the relatively small number of multi-stage vehicles subject to the Labeling Act requirements and the fact that key statutory definitions relevant to parts content calculations do not appear to contemplate vehicles manufactured in more than one stage.

As discussed above, section 210 defines "final assembly point" as "the plant, factory, or other place at which a new passenger motor vehicle is produced or assembled by a manufacturer and from which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle * * *." Moreover, section 210 provides that costs incurred at or beyond the final assembly point are not included in parts content calculations.

For multi-stage vehicles, it is not clear from the statutory definition whether "final assembly point" refers to the place where an incomplete vehicle is assembled or to the place of final stage manufacture. Regardless of which location is considered to be the point of final assembly, problems can occur in applying the statutory requirements.

Assume, for example, the possibility of considering the place where the incomplete vehicle is assembled as the final assembly point. An incomplete vehicle includes, as a minimum, a frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be part of the completed vehicle. See 49 CFR Part 568. It might have all component parts necessary for mechanical operation. However, the vehicle is not delivered to a dealer or importer from the plant where the incomplete vehicle is assembled. Moreover, a large number of the

vehicle's parts may not be included at this time.

Assume instead the possibility of considering the place of final stage manufacture as the final assembly point. It might be argued that the incomplete vehicle manufacturer should be considered an outside supplier of passenger motor vehicle equipment. However, section 210 defines passenger motor vehicle equipment as "any system, subassembly, or component received at the final vehicle assembly point for installation on, or attachment to, such vehicle * * *." An incomplete vehicle does not fit this definition. Moreover, if the incomplete vehicle manufacturer were considered an outside supplier of equipment, the bulk of final assembly costs (of the incomplete vehicle) would be included in parts content calculations, a result that is clearly inconsistent with Congressional intent.

It might be possible for NHTSA to develop an alternative approach to solve these problems, such as considering the place where the incomplete vehicle is manufactured and the place of final stage manufacture to both be final assembly points. However, any such approach would be complicated and itself require a departure from the express statutory language. Given that the total number of multi-stage vehicles subject to the Labeling Act is relatively small and the fact that the statutory definitions do not appear to contemplate vehicles manufactured in more than one stage, the agency believes it is appropriate to simply exclude all such vehicles from the requirements related to items 1 and 2 of the label.

Final stage manufacturers are required to provide items 3, 4 and 5 of the label. The agency is specifying, for purposes of item 3 of the label, that the final assembly point for multi-stage vehicles is the location where the incomplete vehicle is assembled. The agency is specifying this location because, unlike the location of final manufacture, it will always involve significant final assembly operations.

H. Recordkeeping Requirements; Supplier Certifications

Section 210(d) provides that the agency must promulgate such regulations as may be necessary to carry out section 210, including regulations to establish a procedure to verify the required labeling information, and regulations applicable to outside and allied suppliers to require such suppliers to certify whether a component provided by such suppliers is United States, U.S./Canadian or foreign. As discussed in the NPRM, in order to verify the information provided on labels, NHTSA contemplates that it would conduct, on an occasional basis, an audit of the information provided on a label. Such an audit would involve requiring the vehicle manufacturer to provide the agency with the manufacturer's basis for the information it provided on the label, e.g., all relevant certifications from suppliers, a listing of parts, cost information, and all calculations used by the manufacturer to derive the information provided on the label. NHTSA would check whether the manufacturer's methodology was consistent with agency regulations. The agency would similarly require individual suppliers to provide the basis for the information and certification that they provided manufacturers or allied suppliers.

In order to ensure that the agency can conduct such an audit, as well as otherwise enforce the labeling requirements, NHTSA proposed to require manufacturers to maintain all records which provide a basis for the information they provide on labels, and to similarly require suppliers to maintain records providing the basis for the information and certification they provide to manufacturers or allied suppliers. Noting that EPA requires fuel economy records to be retained for five years after the model year to which they relate, NHTSA proposed to require manufacturers to maintain records for five years after December 31 of the model year to which the records relate, and to require suppliers to maintain records, which form a basis for the information they provide to manufacturers or allied suppliers, for six years after December 31 of the calendar year set forth in their submissions to manufacturers/allied suppliers.

NHTSA also addressed the issue of whether manufacturers should have the option of maintaining records electronically. The agency stated that it believes manufacturers and allied suppliers should retain the original copies of information provided by suppliers, but sought comment on whether to allow them to retain the certifications and other information obtained from suppliers electronically, specifically in the form of electronic images. NHTSA proposed to permit manufacturers and suppliers to maintain all other records in either paper or electronic form for purposes of data storage, provided that in every case all of the information contained in the record is retained.

Numerous commenters argued that certifications and other information should be permitted to be submitted to manufacturers/allied suppliers electronically, as well as stored electronically. AAMA stated that it objects to manufacturers receiving and maintaining original copies of certificates. That organization stated that with the enactment of the Customs Modernization Act, GM, Ford and Chrysler are developing process to collect all content and customs data electronically. Ford argued that electronic storage is more efficient and cost effective and is consistent with the recently signed Customs Automation Act.

Toyota also recommended against any requirement to obtain or retain actual paper certificates. It stated that the rules should allow all required records to be retained electronically. APMA stated that the proposed requirements to require suppliers to generate paper originals for certificates would be burdensome and impede the spread of EDI. That organization stated that the adoption of the AIAG/EDI package into the content reporting requirements under NAFTA is expected to begin in 1995. It recommended that all records be allowed to be kept in any medium.

Honda stated that it supports the proposal to require written certifications by suppliers to manufacturers.

Nissan stated that it believes that a five to six year retention period is excessive. It suggested a retention period for manufacturers of three years after December 31 of the model year to which records relate, and, for suppliers, a retention period of four years after December 31 of the calendar year set forth in the certificate.

After considering the comments, NHTSA has decided to permit certifications and other records to be submitted and retained electronically. The agency believes that this is consistent with the approach being taken by the Federal government in related areas, and with section 210's requirement to establish regulations that avoid imposing unnecessary and costly burdens on the manufacturers.

NHTSA has also decided to require records to be maintained for the periods proposed in the NPRM. As discussed above, these requirements ensure that records are maintained for five years after the end of the model year to which they relate. The agency disagrees with Nissan that the retention period is excessive. A possible audit of the information provided on a label could take substantial time, particularly given the need to trace the information back to suppliers. NHTSA also notes that the cost of maintaining records is substantially reduced to the extent that manufacturers use electronic means.

I. Reporting Requirements

NHTSA proposed to require vehicle manufacturers to submit to the agency three copies of the information that will appear on each carline's label. The agency proposed to require submittal of this information for each carline not later than the date the first vehicle of the carline is delivered to dealers for that model year.

The agency stated that it believes this reporting requirement is necessary for several reasons. It would provide one central location from which information can be gathered concerning the labels. Inquiries could come from within the agency, or from interested members of the public. In addition, such reporting would aid the agency in deciding whether to initiate any investigations or audits.

The agency received several comments on the proposed reporting requirements. AAMA stated that the proposed requirements should be modified to require submittal of information not later than the date the first vehicle of the carline is offered for sale to the ultimate purchaser. Isuzu suggested that flexibility be introduced to permit manufacturers to submit a report whenever a major specification change has been made in the middle of a model year or whenever the manufacturer opts to change the model year at a timing different from normally accepted model year changes. NTEA stated that it understands that small multi-stage businesses are not subject to the reporting requirements unless they produce carlines of over 1,000 vehicles.

After considering the comments, the agency has decided to adopt reporting requirements along the line of the proposal, but to require submittal of information not later than the date the first vehicle of the carline is offered for sale to the ultimate purchaser. This date will be adequate for the agency's purposes in monitoring the information on the labels. Moreover, this date is consistent with the agency's decision, discussed above, not to require labels to be placed on vehicles prior to the introduction date.

The agency cannot provide flexibility to permit manufacturers to update labels during a model year, since section 210(b) provides that content percentages are "established at the beginning of each model year for such carline and shall be applicable to that carline for the entire model year." There is therefore no reason to provide flexibility with respect to reporting updated information. However, if a manufacturer discovers an error in the information reported to the agency, it should send information to the agency correcting that error.

NHTSA agrees with NTEA that any manufacturer that is not required to provide information on a carline basis, i.e., items one and two on the label, is not subject to the reporting requirements.

J. Leadtime/First Year Requirements

A number of manufacturers and suppliers argued that they cannot comply with all the data collection and calculation requirements by the October 1994 implementation date. AAMA stated that the proposed regulation will require extensive data collection and calculation requirements, and that there are several areas of uncertainty that will not be resolved until a final rule is issued. It stated that it has been working in conjunction with the AIAG and a number of suppliers to establish processes to comply with the law, but has been unable to complete this activity because of uncertainties about the final rule. AAMA stated that manufacturers and suppliers will not be able to comply with all the data collection and calculation requirements by October 1994. It requested NHTSA to allow manufacturers and suppliers to use procedures that are expected to yield similar results for at least 12 months after the final rule is published.

GM stated that because of the scope of the effort to comply with the new requirements, at least one year is required between the publication of the final rule and the effective date of the rule. That manufacturer stated that it supports the interim AAMA proposal of making a best efforts determination of domestic and foreign content for the AALA required label using presently available CAFE cost and origin data for the first year after publication of the final rule.

Ford submitted a comment along the lines of that of AAMA. It also provided NHTSA with a copy of an EPA final rule, published in February 1993, which established labeling requirements for products manufactured with certain ozone-depleting substances. EPA stated in the preamble for that final rule that it recognized the practical problems the regulated community would have in meeting a May 15, 1993 statutory deadline for labeling, "given the late publication of this rule." 58 FR 8136, February 11, 1993. EPA stated that "(a)s a result of the concerns, it is the Agency's policy to take no enforcement action for matters occurring during the first nine months following the publication of these regulations."

BMW stated that if NHTSA does not permit manufacturers a permanent alternative of using existing, substantial business records to make parts content calculations, it should allow such an alternative on an interim basis in lieu of granting additional leadtime.

Calsonic stated that the proposed leadtime for suppliers was extremely short and requested postponement of at least a year. Nippondenso also stated that the proposed leadtime for suppliers was short, and requested that the effective date of the regulations be postponed for at least six months.

After considering the comments, NHTSA agrees, given the complexity of the data collection and calculation requirements, that it is impossible for manufacturers and suppliers to fully comply with all of the requirements by October 1, 1994. The agency notes that this conclusion is partly based on the fact that manufacturers cannot complete their calculations until they receive specified information from suppliers, and allied suppliers cannot complete their calculations until they receive specified information from outside suppliers. The conclusion is also partly based on the fact that many of the requirements are in the regulation as opposed to section 210, i.e., manufacturers and suppliers could not comply with the data collection and calculation requirements absent a final rule.

NHTSA is nonetheless faced with the section 210(b) requirement that labels be provided on each vehicle manufactured on or after October 1, 1994. The agency agrees with AAMA that the most appropriate means for resolving this problem is to permit manufacturers and suppliers to use procedures that are expected to yield similar results, for about a year. The agency believes that this temporary alternative will ensure that consumers receive the best information possible about the foreign and U.S./Canada origin of vehicles they are considering purchasing during this period, given that full compliance by manufacturers and suppliers is not possible. NHTSA has decided to adopt the following specific requirement:

> For model year 1995 and model year 1996 carlines which are first offered for sale to ultimate purchasers before June 1, 1995, manufacturers and suppliers may, instead of following the calculation procedures set forth in this part, use procedures that they expect, in good faith, to yield similar results.

NHTSA notes several things about this temporary alternative approach. First, it is available for all model year 1995 vehicles and for any model year 1996 vehicles which are introduced before June 1, 1995. The agency selected the June 1, 1995 date because it ensures manufacturers additional flexibility for

about a one-year period. NHTSA notes that since most model year 1996 vehicles will be introduced in the fall of 1995, manufacturers will have additional flexibility for early introductions (a model year 1996 vehicle could be introduced as early as January 1995, for which full compliance might not be possible), but will need to meet the full requirements for the vast majority of model year 1996 vehicles.

Second, manufacturers may use any procedures that they expect, in good faith, to yield "similar results." For example, the manufacturers could use the CAFE procedures for making content determinations so long as they made adjustments to attempt to account for differences between the CAFE content requirements and Labeling Act requirements, e.g., CAFE does not exclude assembly, sales, and marketing costs.

Third, manufacturers may choose to rely entirely on information they already have in their possession or, at their option, obtain additional information from some suppliers to help them make the necessary calculations. To the extent that manufacturers are following this alternative approach, their suppliers may as well.

NHTSA notes that Nissan asked, in a telephone call to NHTSA's Office of Chief Counsel, how the Labeling Act requirements apply to MY 1994 vehicles that are manufactured on or after October 1, 1994. As discussed below, it is the agency's opinion that the Act's requirements do not apply to any MY 1994 vehicles.

The first sentence of section 210(b)(1) reads as follows: "Each manufacturer of a new passenger motor vehicle distributed for commerce for sale in the United States *shall annually establish for each model year* and cause to be affixed * * * on each vehicle manufactured on or after October 1, 1994, in a prominent place, one or more labels * * *." Section 210(b)(2) provides that the percentages required for the label "shall be established at the beginning of the model year * * *." With respect to the issue of how the Labeling Act requirements apply to MY 1994 vehicles, NHTSA believes it is significant that: (1) The requirement to label vehicles takes effect on the date traditionally considered to be the beginning of MY 1995 (October 1, 1994), and (2) the percentages required to be included on the label are to be established at the *beginning* of the model year. Reading these provisions together, the agency believes that the statute requires the labeling requirements to begin with MY 1995 vehicles, since the time when the percentages are to be established for that model year corresponds to the effective date of the requirements. NHTSA notes that very few MY 1994 vehicles are likely to be manufactured on or after October 1, 1994.

K. Other Issues

1. Supplier Definitions

Section 210(f)(15) defines *allied supplier* to mean "a supplier of passenger motor vehicle equipment that is wholly owned by the manufacturer, or in the case of a joint venture vehicle assembly arrangement, any supplier that is wholly owned by one member of the joint venture arrangement." Section 210(17) defines *outside supplier* to mean "a supplier of passenger motor vehicle equipment to a manufacturer's allied supplier or anyone other than an allied supplier who ships directly to the manufacturer's final assembly point."

NHTSA addressed several issues concerning the supplier definitions in the NPRM. In commenting on the request for comments, Ford had asked that NHTSA consider a supplier owned jointly by more than one parent company as an allied supplier of both parents, especially in situations such as those in Canada, in which the Canadian government has laws requiring partial Canadian ownership of share. NHTSA stated that it believes that such a situation is akin to the joint venture agreement mentioned in section 210(f)(15) of the Cost Savings Act. The agency tentatively decided to treat the supplier in such a case as being wholly owned by one of the manufacturers in the joint venture agreement, and therefore an allied supplier for purposes of any carline jointly manufactured.

After further consideration, however, NHTSA has decided that it cannot fully accommodate this suggestion by Ford. The agency notes that Ford made the following statement in its comment on the request for comments:

> We believe that suppliers and plants owned, operated, or controlled by the parent company (i.e., a consolidated subsidiary of the parent company or "joint venture" of partners in which the parent holds a majority interest) should be treated as allied suppliers.

Thus, Ford appears to have been asking that the agency replace the specification in the statute that suppliers be "wholly owned" with a specification that they merely have to be "controlled." NHTSA does not believe there is any justification for such a departure from the statute. Moreover, the agency believes that the statement in the NPRM that the situation is "akin" to the joint venture agreement mentioned in section 210(f)(15) was incorrect, i.e., there is no analogy between the two situations.

As discussed below, the agency is clarifying the definition of *allied supplier* to encompass varying corporate structures where ownership is complete. However, a mere control relationship is not sufficient to make a supplier "allied."

In the NPRM, the agency specifically addressed the issue of a supplier owned by the parent company of the manufacturer. NHTSA stated that it recognizes that a supplier owned by the parent company of a manufacturer is not strictly wholly owned by the manufacturer. The agency noted, however, that if the parent is a holding company that wholly owns both the manufacturer and the supplier, there is no meaningful difference in this situation from that in which the strict definition of *wholly owned* occurs. In other words, there are no outside interests represented (as occurs if there are outside shareholders). Therefore, the agency tentatively decided to treat a supplier wholly owned by the parent holding company of a manufacturer as an allied supplier, provided that the parent holding company also wholly owns the manufacturer.

Finally, NHTSA indicated that it read section 210(f)(17) as requiring wholly owned suppliers to allied suppliers to be treated as outside suppliers.

The agency received a number of comments on the supplier definitions. Ford stated that to clarify the difference between suppliers and distributors, a definition of supplier should be incorporated into the definition section. It recommended the following definition, which it indicated is consistent with NAFTA—The term supplier means a person or an enterprise that manufactures or assembles passenger motor vehicle equipment.

The agency does not agree that distributors should be eliminated from the definition of supplier. NHTSA observes that a distributor may supply passenger motor vehicle equipment to a manufacturer. Moreover, a manufacturer might have a relationship with a distributor to obtain certain equipment but not with the company which manufacturers or assembles the equipment.

Ford also stated that the outside supplier definition requires clarification. It argued that the definition in the statute was not intended to include, in any way, allied suppliers. It stated that the regulation should clearly eliminate allied suppliers from the definition. Ford noted that an interpretation that an allied supplier

becomes an outside supplier to the extent that it supplies equipment to another allied supplier could result in an allied supplied part having two sets of content values: the actual U.S./Canadian content when the component is supplied to the final assembly plant, and a rolled-up or down U.S./Canadian content when the component is sent to another allied manufacturing facility.

After considering Ford's comment, NHTSA has reconsidered its view that section 210(f)(17) requires wholly owned suppliers to allied suppliers to be treated as outside suppliers. The basis for that view was that a wholly owned supplier to an allied supplier falls within the section 210(f)(17) definition of outside supplier. However, such a supplier also falls within the section 210(f)(15) definition of allied supplier. The agency agrees that it is appropriate to resolve this ambiguity in the regulation.

The only significant difference between the statutory treatment of allied and outside suppliers is that allied suppliers must provide actual U.S./Canadian content information, while the roll-up, roll-down provision applies to outside suppliers. Thus, Congress decided that suppliers which are wholly owned by manufacturers should generally be held to a higher standard concerning the specificity of the U.S./Canadian content information that they provide. Given this difference, the agency agrees with Ford that an allied supplier should not be considered an outside supplier simply because it supplies equipment to an allied supplier. NHTSA also notes that if an allied supplier were to be treated as an outside supplier in such a context, manufacturers could obtain the benefits of the roll-up, roll-down provision for their allied suppliers, simply by having them ship their equipment through another allied supplier. This position is reflected in the definition of *allied supplier* set forth in the final rule.

Toyota stated that the proposed regulation does not address the scope of the statutory term *allied supplier*. That manufacturer stated that because some issues have arisen concerning the statutory definition, it recommends that the regulation provide certain clarifications. Toyota stated that the determination of whether the allied supplier relationship exists within the statutory meaning does not depend on the number of levels of ownership but on the nature of ownership, i.e., whether it is complete ownership. That manufacturer stated that it should not matter whether ownership is direct or indirect.

Honda stated that NHTSA proposed to treat as *allied* a supplier wholly owned by the same parent company that wholly owns the manufacturer. That company stated that NHTSA's analysis does not extend quite far enough to encompass Honda's corporate structure. According to that manufacturer, two parent companies within the Honda group together wholly own both the manufacturer and the supplier. No outside interests are represented. Honda requested clarification in the final rule.

NHTSA agrees with these comments of Honda and Toyota, which the agency believes are consistent with the approach taken in the NPRM for suppliers owned by the parent company of the manufacturer. The definition of *allied supplier* in the final rule clarifies the meaning of that term with respect to the corporate relationships discussed by those commenters.

2. Definitions of Dealer and Ultimate Purchaser

Section 210(f)(7) defines *dealer* to mean "any person or resident located in the United States, including any territory of the United States, or the District of Columbia, engaged in the sale or the distribution of new automobiles to the ultimate purchaser." Section 210(f)(6) defines *new passenger motor vehicle* to mean "a passenger motor vehicle the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser."

AIADA stated that in the case where a state or local jurisdiction has chosen to regulate the automobile industry and the conduct of the industry through franchise laws, it believes the definition of dealer in the state or local franchise law should apply to this Act. That organization stated that in promulgating regulations without clarifying the term dealer, NHTSA could inadvertently undermine state and local franchise laws.

NHTSA notes that since the Labeling Act includes an express definition of the meaning of *dealer*, the agency cannot delegate to states or local jurisdictions the right to change the definition for purposes of the Labeling Act. The agency notes, however, that the Labeling Act and implementing regulation merely require persons engaged in the sale or distribution of new automobiles to the ultimate purchaser to maintain the content label. Neither the Act nor the regulation specifies any requirements concerning who is permitted to be a dealer.

AIADA also stated that clarification is needed with respect to the meaning of *ultimate purchaser*. That organization stated that without such clarification, there could be confusion and unnecessary liability for dealers. AIADA stated that for vehicles in rental service, demonstrator service and executive service, the law is unclear as to who is the ultimate purchaser. That organization asked the agency to specify what transaction results in an individual or entity being an ultimate purchaser.

NHTSA has decided to add the following definition of *ultimate purchaser* to the regulation: The term *ultimate purchaser* means with respect to any new passenger motor vehicle, the first person, other than a dealer purchasing in its capacity as a dealer, who in good faith purchases such new passenger motor vehicle for purposes other than resale. This definition is based on one used in the Automobile Information Disclosure Act (AIDA), 15 U.S.C. 1231–1233, the Act which requires the Monroney label. NHTSA believes that it is appropriate to adopt this definition given that the Labeling Act's definitions of *dealer* and *new passenger motor vehicle*, which use the term *ultimate purchaser*, are also based on definitions included in the AIDA.

Except to the extent otherwise provided in the regulation established by today's final rule, e.g., with respect to temporary removal of separate content labels for test drives, NHTSA plans to treat vehicles in rental service, demonstrator service and executive service the same for Labeling Act purposes as the Justice Department treats these vehicles for purposes of Monroney labels. NHTSA believes that this is appropriate, given the same general purposes of the labels, and the similarity of the relevant definitions in the statutes and, in the case of the Labeling Act, the implementing regulation. The agency is including in the docket a copy of a February 24, 1994 letter from the Justice Department which provides additional guidance in these areas.

3. Joint Ventures

NHTSA stated in the NPRM that several commenters on the request for comments had noted that there are carlines manufactured jointly by two manufacturers, and requested that the agency permit the manufacturers to determine between themselves which would be responsible for tracking, record keeping and labeling. The agency tentatively agreed that this would be an appropriate approach and proposed requirements to permit multiple manufacturers to determine among themselves which of them is to be considered the vehicle manufacturer for

purposes of the labeling requirements. The agency also proposed to specify that, in the absence of such an agreement, the carline "shall be attributed to the single manufacturer that markets the carline."

Nissan stated that it would not like to see language that specifies a procedure to determine the manufacturer of record. It stated that the selection of the manufacturer of record should be determined in accordance with the statutory language and agreement between the partners involved.

Isuzu stated that it believes the final rule must specify that if no written article exists in a joint-venture agreement regarding manufacturer responsibility, carline responsibility is attributed to the manufacturer mentioned in certification label with respect to the safety standards.

In a telephone call to NHTSA's Office of Chief Counsel, an attorney representing Toyota asked whether the Geo and the Corolla, are in one or two carlines. These are very similar vehicles, produced on the same assembly line, one of which is marketed by GM and the other by Toyota. NUMMI stated that the Corolla is manufactured in Japan, at NUMMI in California, and in Canada. That company stated that the NPRM, in discussing joint ownership/joint production relationships, attributed carline to the manufacturer that markets the carline, subject to certain conditions. NUMMI argued that the use of the word "manufacturer" in this case implies each production location.

After considering the comments, the agency has decided that multiple manufacturers should generally be permitted to determine among themselves which of them is considered the vehicle manufacturer for purposes of the labeling requirements. NHTSA also believes it is appropriate to specify that, in the absence of such an agreement, a vehicle is attributed to the manufacturer which markets the vehicle. This approach provides maximum manufacturer flexibility, while also specifying who is responsible for labeling in the absence of an agreement among the joint venturers.

NHTSA believes, however, that additional clarification is needed concerning the meaning of "carline" in the joint venture context. While manufacturers may determine between themselves who is responsible for tracking, recordkeeping and labeling, they must follow the specified requirements for making carline determinations. As discussed earlier in this notice, section 210 specifies that the term "carline" means a name denoting a group of vehicles which has a degree of commonality in construction. It is the agency's opinion that the Geo and Corolla are in different carlines, because they have different names. Moreover, to the extent that NUMMI produced Corollas in California and Toyota produced similar or identical Corollas in Japan, all of the Corollas must be placed in the same carline, given the statutory definition.

4. Currency Exchange Rate Calculations

Since currency exchange rates may fluctuate on a day-to-day basis, thereby affecting domestic content valuations, NHTSA proposed a methodology for determining the exchange rate to be used. The agency stated in the NPRM that it believes that, in the interest of consistency, the percentages printed on the labels required by section 210 should be determined using the same basis. The agency proposed a specific procedure for calculating currency exchange rates, similar to that set forth in EPA's CAFE regulation. Manufacturers would be required to take the mean of the exchange rates in effect at the end of each quarter set by the Federal Reserve Bank of New York for twelve calendar quarters prior to and including the calendar ending one year prior to the date that the manufacturer submits information to the agency for a carline. The agency proposed essentially the same procedure for suppliers, replacing the date the manufacturer submits information to the agency with the date of the information the supplier provides to a manufacturer or allied supplier.

NHTSA noted that EPA had suggested that NHTSA allow exchange rate calculations based on Purchasing Power Parity Rates (PPP), provided that a manufacturer was already using an approved PPP calculation for EPA purposes. EPA allows an exemption from the normally required exchange rate calculations, based on a petition. EPA stated that it believes that, by coordinating the fuel economy and content labeling decisions, consistency between the two agencies will be maintained. NHTSA stated that it was considering adopting the EPA suggestion, particularly by requiring a manufacturer to use the same conversion method for content label purposes as was approved by the EPA for fuel economy purposes. The agency sought suggestions on this proposal.

AAMA stated that manufacturers and suppliers should have the option to convert foreign currency utilizing the exchange rates used in the financial records at the time the content calculations are made. It stated that under this option, all financial data used to calculate content will be internally consistent and tie directly with the financial records. That organization also stated that this option would avoid the major systems revisions that may be required under the proposed average exchange rate methodology. AAMA also stated that the option maintains consistency between the treatment of the prices of many commodities, where the prices fluctuate dramatically, and currency prices in that none of these prices are smoothed by averaging. Finally, AAMA stated that the option facilitates the same base cost data that is required to calculate origin under NAFTA, which will reduce the burden on manufacturers and suppliers.

Toyota urged the agency to adopt a rule under which all manufacturers must use the same method for converting currency. That manufacturer argued that EPA's suggested approach would depart from this principle by requiring a manufacturer to use the same method as approved by EPA for fuel economy purposes. Toyota stated that the EPA approach is legally unsound and will produce inconsistent information for consumers comparing vehicles for possible purchase. Toyota argued that, from a legal standpoint, the fuel economy calculation is made pursuant to a different statute with a different purpose. That manufacturer stated further that, with respect to the currency exchange method that should be used, it believes that PPP is the most appropriate method for currency conversion and that use of this method by all manufacturers will result in consistency of calculation and avoid difficulties caused by rapid fluctuations in exchange rates. Toyota stated that if NHTSA does not require PPP, the agency should require currency conversion to be conducted according to Generally Accepted Accounting Principles (GAAP). Toyota stated that it believes that GAAP is preferable for Labeling Act purposes to the proposed method.

Mitsubishi stated that manufacturers should have the option of using PPP. It stated that this would be consistent with the EPA domestic content calculation for CAFE purposes. That company added that, in the interests of fairness, the same restrictions should apply as under the CAFE regulations—manufacturers should have the option of using PPP, but first they must get approval, and then cannot switch back and forth merely to get the optimal rate.

After considering the comments, NHTSA has decided to adopt the proposed method for determining exchange rates, including requiring a

manufacturer to use the same conversion method for content label purposes as was approved by the EPA for fuel economy purposes. The agency believes that this approach provides flexibility to manufacturers, while ensuring that they use appropriate methods for determining exchange rates.

The agency believes that AAMA's recommendation to permit manufacturers and suppliers to use the currency rates that are used in their financial records at the time the content calculations are made is so broad as not to amount to any specification for determining exchange rates. A manufacturer could use any method it chose and could switch back and forth between methods to obtain the rates it desired. By contrast, EPA permits a degree of flexibility, but ensures that an appropriate method is used and that it is not changed back and forth between years. The agency notes that if a manufacturer obtains EPA approval for whatever method is reflected in its financial records, it can use that method for both EPA and Labeling Act purposes.

While Toyota is correct that different manufacturers can use different methods for determining exchange rates, it has not shown that this will result in significant differences in label values. Moreover, it has not shown why differences in the purposes of the CAFE and Labeling statutes should result in different approaches for determining exchange rates. Since both statutes require making determinations about the content of passenger motor vehicles, NHTSA believes it is appropriate for EPA and NHTSA to follow the same approach for determining exchange rates.

5. Value Added by Foreign Suppliers

NHTSA noted in the NPRM that section 210(f)(5)(B) provides a specific formula for determining the U.S./Canadian content of equipment received by manufacturers from allied suppliers. The formula provides first that the foreign content is determined by adding up the purchase price of all foreign material purchased from outside suppliers that comprise the individual passenger motor vehicle equipment, and then subtracting such purchase price from the total purchase price of such equipment. The remainder is the U.S./Canadian content of the equipment.

The agency noted that this formula does not appear to take into account the possibility that an allied supplier may be foreign, since it assumes that everything, except for the foreign value passed through from outside suppliers, is U.S./Canadian. Based on a reading of the statute as a whole, NHTSA stated that it does not believe Congress intended to convert the entire value added by allied suppliers located outside the U.S./Canada into domestic content. Therefore, the proposed regulation treated the value added by allied suppliers located outside the U.S./Canada as non-U.S./Canadian. NHTSA specifically requested comments on this issue.

AAMA stated that it agrees with NHTSA that value added by allied suppliers located in a foreign country should be treated as foreign. Nissan stated that it agrees that it may not have been the intent of the law to treat parts obtained from allied suppliers outside the U.S./Canada as U.S./Canadian parts content. APMA stated that it supports this part of the proposal on the ground that it is responsive to Congress' intent.

BMW stated that it agrees with NHTSA that the intent of the legislation was not to include value added outside U.S./Canada from foreign allied suppliers as domestic content and that, accordingly, it supports the language NHTSA has proposed. BMW expressed concern, however, that in many instances throughout the NPRM preamble, NHTSA referred to the explicit language of the legislation and stated that deviation from this language is not allowed. BMW stated that if NHTSA is able to deviate from the explicit language of the legislation in this case, the reasoning for refusing to modify other wording seems inconsistent.

After considering the comments, NHTSA has decided to follow the approach discussed in the NPRM. The agency notes that no commenters disagreed with the agency's view that Congress did not intend to convert the entire value added by allied suppliers located outside the U.S./Canada into domestic content.

With respect to BMW's comment, the agency notes that its interpretation is based on principles of statutory construction related to "whole statute" interpretation and limits of literalism. See Sutherland Stat Const §§ 46.05 and 46.07 (5th Ed). Basically, a statute should not be read literally where such a reading is contrary to its purposes. NHTSA does not believe that anyone could reasonably argue that Congress intended to convert the entire value added by allied suppliers located outside the U.S./Canada into domestic content; that result flies in the face of the statute as a whole and its purpose. The agency does not believe that any of the other situations referred by BMW are similar.

6. International Agreements; Mexico

AIAM stated that before promulgating a final rule, NHTSA should consult with USTR to determine whether the rule is consistent with NAFTA and particularly Article 300 providing for national treatment of goods produced in the territories of the signatory parties. AIAM also stated that USTR should be asked whether the rule is consistent with those U.S. treaties of Friendship, Commerce and Navigation that convey most favored national treatment and national treatment for investors and goods, particularly in light of the special treatment afforded to Canadian production. Nippondenso stated that Mexico should be treated on the same basis and Canada under the Labeling Act.

The European Community (EC) stated that it considers the proposal to be more trade restrictive than necessary to fulfil the aim of consumer information. More specifically, the EC stated the following:

> The proposed labelling system would indeed not give any useful information about the product as such or its characteristics. The only information contained on the label would be whether, and to what extent, the individual parts of the product are of American or Canadian origin. In the opinion of the EC, the U.S. measure can only have the objective to influence consumers to buy American or Canadian motor vehicles.
>
> The EC believes that the U.S. proposal constitutes an unjustifiable discrimination, contrary to article 2.1 of the GATT Code on Technical Barriers to trade:
>
> • the U.S. proposed obligation to indicate the origin of the engine and gearbox could discourage U.S. constructors to import them from their European subsidiaries or from European component manufacturers.
>
> • within the European Community, the assembly of vehicles is quite flexible regarding the origin of car components, due to the internal market. For a single model of motor vehicle, a specific part may originate from one of several countries. The U.S. proposal will therefore have greater administrative costs on European importers than other importers.
>
> The EC is seriously concerned that such a proposal will create unnecessary trade barriers. Should the U.S. rules be adopted as proposed, this would put an excessive financial burden on importers to access the U.S. market.
>
> The U.S. proposal may involve the disclosure of confidential data from manufacturers other than U.S. manufacturers.
>
> In consequence, since the U.S. authorities, in accordance with Article 2.1 of the GATT Agreement on Technical Barriers to Trade, have an obligation to ensure that technical regulations are not prepared with a view to creating unnecessary obstacles to international trade, the European Community requests the U.S. authorities to take the above comments into account and adapt their proposal accordingly.

As discussed in the NPRM, NHTSA does not believe that section 210 contravenes the spirit or letter of GATT for the simple reason that it is informational in nature, and has no other effect. Violations of GATT occur when barriers to trade are established by raising tariffs on selected countries, or by granting preferences to local goods over foreign goods. Under section 210, no tariffs are levied and no preferences are given to vehicles based on the U.S./Canadian content. No quotas are established, and no vehicle is forbidden to be sold in the U.S. The only effect of section 210 is to provide consumers information about the origin of the equipment in vehicles they are considering purchasing. If a consumer is not concerned with the country of origin of a vehicle's equipment, the label will have no bearing on the purchasing decision whatsoever. If, on the other hand, a purchaser wishes to buy a vehicle that is comprised of equipment from the U.S./Canada, Germany, England, Japan, Korea, or some other country, the label will give that consumer information needed to help make such a decision.

With respect to the EC's concern about administrative costs for European manufacturers, NHTSA notes that since the requirements imposed by the rule are strictly informational and do not require any product changes other than the addition of a label, the costs for all manufacturers are small. The agency also observes that, as discussed above, it made some changes in the final rule to provide greater flexibility, and hence reduced costs, for manufacturers.

NHTSA notes that the Conference Report includes the following explanation concerning combined treatment of U.S. and Canadian content:

> The conferees also note the reasons that the percentage of USA and Canadian content value required to be listed in this bill is combined. The conferees believe it is appropriate to make this new labeling requirement as consistent as possible with existing laws and regulations. The conferees also do not want this legislation to increase the cost of automobiles to consumers.
>
> The conferees also recognize that the USA and Canada have a longstanding and specific automobile free trade pact (the US and Canada Automotive Parts Agreement), one that predates the USA-Canada Free Trade Agreement by over 20 years. This special relationship in automotive trade, and other factors, justify listing both US and Canadian automobile value as a combined percentage. The conferees do not intend that any other country is to be combined with the USA and Canada in the percentage of total automotive value required to be listed by this legislation.

7. Consumer Guide

AIADA stated that it believes the labeling law will be misleading and confusing for consumers, and that the dealer will ultimately bear the burden and be in the difficult position of explaining what it believes to be illogical content information. That organization stated that to aid dealers and consumers, it believes NHTSA should publish and make publicly available a consumer guide that explains just what the content figures represent and do not represent. It stated, for example, that the guide should explain the distinction between allied and outside suppliers and how that affects the value of motor vehicle content.

NHTSA believes that a consumer guide that attempted to explain the details of the content calculation procedures, such as the distinction between allied and outside suppliers, would not be helpful to consumers but would instead cause unnecessary confusion. NHTSA believes that the vehicle labels required by this final rule will be readily understood by consumers and help those that wish to do so to take content information into account in making a purchase decision.

L. May 1994 Congressional Comment

In May 1994, NHTSA received a letter concerning this rulemaking signed by Senator Carl Levin and Representatives Sander Levin, Marcy Kaptur and Nancy Johnson. The agency was also advised by phone that Representative Ralph Regula supported the letter. The letter reads as follows:

> We are writing to urge you to draft American Automobile Labeling Act implementing regulations that reflect the legislation's intent to provide an accurate means of measuring the parts value content of a vehicle.
>
> The trend has been for Japanese transplants to purchase parts assembled in the U.S. by Japanese affiliated parts makers, a high percentage of which are merely assembled here using subcomponents and materials imported from Japan. Nonetheless, they are erroneously counted as U.S. parts for the purposes of calculating U.S. content levels. The Labeling Act was an attempt by Congress to establish a tool to more accurately measure the "actual" U.S. and Canadian content of vehicles sold in the U.S. based on the origin of where the parts are made, not where the parts are purchased or assembled. It is our hope that the Labeling Act will achieve this objective by imposing a stringent definition of what is an "American or Canadian made" auto part.
>
> Currently, Japanese transplant auto makers claim high levels of U.S. content in their U.S. made vehicles. But they will not provide the necessary data to measure accurately the U.S. content levels of the auto parts used in these vehicles, and thus, it is impossible to verify their claims. After tracing the actual source of parts, a 1992 Economic Strategy Institute study found that the U.S. auto part used in a 1991 Honda accord contained ⅔ Japanese content and only ⅓ "actual" U.S. content. Even with these low levels of U.S. content, Honda took credit for these parts being totally U.S.-made.
>
> In order to adequately distinguish between parts assembled in the U.S. using imported materials and parts made in the U.S. using U.S. materials, the Labeling Act must include tracing requirements similar to the tracing requirements in the NAFTA rule of origin, with the exception that Mexican parts would not be included as U.S. or Canadian. Tracing should be used to determine if suppliers can be designated as North America (U.S. or Canadian)—if they achieve the 70% North American content value—as well as to determine the country of origin for the engine and transmission. For example, if tracing were required, an engine or transmission that contains 75% Japanese content but is assembled in the U.S. would be correctly found to be primarily of Japanese origin, not of U.S. origin.
>
> Finally, the Labeling Act requires that the names of all countries supplying 15% or more total parts value be listed. To be meaningful, this requirement should not only include the name of the country, but also the approximate percentages those countries contribute * * *.

NHTSA notes that it is addressing this comment here in this separate section instead of addressing it in each of the several relevant sections earlier in this preamble, since this approach is simpler and since the comment was received near the end of the preparation of the preamble.

The agency believes that today's final rule adequately distinguishes between parts assembled in the U.S. using imported materials and parts made in the U.S. using U.S. materials. For purposes of calculating item one of the label, the percentage U.S./Canadian parts content for vehicles within the carline, tracing is required to the extent that a supplier claims that an item of equipment is U.S./Canadian. An outside supplier cannot designate a part as U.S./Canadian unless it determines, on the basis of tracing the part's materials back to the raw material stage, that at least 70 percent of the cost of the part represents value added in the U.S. or Canada. This is true for all items of equipment, including engines and transmissions.

The procedures for making country of origin determinations for purposes of items four and five of the label, countries of origin for the engine and transmission, do not require tracing back to raw materials. However, country of origin determinations must be made for each component delivered to the engine or transmission assembly plant (or produced at such plant), and the cost

of assembling the engine or transmission is not considered in making such determinations. Therefore, engines and transmissions that are assembled in the U.S. largely of imported materials will not be determined to be of U.S. origin under the procedures. As discussed above, the label will indicate that these country of origin determinations are for "engine parts" and "transmission parts," to make it clear to consumers that these country of origin determinations exclude assembly costs. NHTSA does not believe that it would be appropriate to impose additional tracing requirements, since such requirements could be very burdensome.

As to the foreign countries which contribute 15 percent or more parts content for vehicle within a carline, manufacturers are required to list not only the names of those countries, but also the specific percentage originating in each such country. If there are more than two such countries, the manufacturer need only provide the information for the two countries with the highest percentages.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under Executive Order 12866. This action has been determined to be "significant" under the Department's regulatory policies and procedures, given the degree of public interest and the relationship to other Federal programs and agencies, particularly those related to international trade.

NHTSA has estimated the costs associated with the rule in a Final Regulatory Evaluation which is being placed in the docket for this rulemaking. That document analyzes the comments concerning costs. The requirements imposed by the rule are strictly informational and do not require any product changes other than the addition of a label. NHTSA estimates the cost of a separate label to be $0.06 to $0.11, and the cost of expanding a Monroney or fuel economy label to be less than $0.01. The total cost for labels for the estimated 14 million vehicles sold in the U.S. annually that are affected by the rule would therefore range from $140,000 to $1,540,000.

Based on manufacturers' comments, NHTSA estimates that a one-time cost to implement a system to collect and store the necessary information for the labels is about $1 million apiece for the three large domestic manufacturers, and $500,000 apiece for 20 other large vehicle manufacturers. Ford estimated annual maintenance costs of $150,000. The agency assumes that this figure is reasonable for the three large domestic manufacturers, and that the other large manufacturers will experience annual costs of about $75,000.

The above cost estimates do not include the compliance costs for suppliers. NHTSA has limited information concerning the costs that will be experienced by the approximately 15,000 parts suppliers to the vehicle manufacturing industry. Some large suppliers (e.g., Rockwell, Dana Corp., or TRW) make hundreds of parts and could experience costs similar to those of a large vehicle manufacturer. Many small suppliers procure all of their inputs from the same country and will experience negligible costs. NHTSA notes that APMA estimated that parts manufacturers will experience costs ranging from $40,000 to $80,000 in the first year, with a reduction in successive years.

Final stage manufacturers will experience only minor costs, since they only need to provide labels showing the final assembly point and the country of origin for the engine and transmission.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, are affected by the regulation, the effect on them is minor since the requirements are informational.

C. National Environmental Policy Act

The agency has analyzed the environmental impacts of the regulation in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and has concluded that it will not have a significant effect on the quality of the human environment.

D. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this final rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. States are preempted from promulgating laws and regulations contrary to the provisions of the rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 583

Motor vehicles, Imports, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends chapter V of title 49 of the Code of Federal Regulations as follows:

1. Part 583 is added to read as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

Sec.

Authority: 49 U.S.C. 32304, 49 CFR 1.50, 501.2(f).

§ 583.1 Scope.

This part establishes requirements for the disclosure of information relating to the countries of origin of the equipment of new passenger motor vehicles.

§ 583.2 Purpose.

The purpose of this part is to aid potential purchasers in the selection of

new passenger motor vehicles by providing them with information about the value of the U.S./Canadian and foreign parts content of each vehicle, the countries of origin of the engine and transmission, and the site of the vehicle's final assembly.

§ 583.3 Applicability.

This part applies to manufacturers of new passenger motor vehicles manufactured or imported for sale in the United States, suppliers of passenger motor vehicle equipment, and dealers of new passenger motor vehicles.

§ 583.4 Definitions.

(a) *Statutory terms.* The terms *allied supplier, carline, country of origin, dealer, foreign content, manufacturer, new passenger motor vehicle, of U.S./Canadian origin, outside supplier, passenger motor vehicle, passenger motor vehicle equipment, percentage (by value), State,* and *value added in the United States and Canada,* defined in 49 U.S.C. 32304(a), are used in accordance with their statutory meanings except as further defined in paragraph (b) of this section.

(b) *Other terms and further definitions.*

(1) *Administrator* means the Administrator of the National Highway Traffic Safety Administration.

(2) *Allied supplier* means a supplier of passenger motor vehicle equipment that is wholly owned by the manufacturer, or in the case of a joint venture vehicle assembly arrangement, any supplier that is wholly owned by one member of the joint venture arrangement. A supplier is considered to be wholly owned by the manufacturer if a common parent company owns both the manufacturer and the supplier, or if a group of related companies own both the manufacturer and the supplier and no outside interests (interests other than the manufacturer itself or companies which own the manufacturer) own the supplier.

(3) *Carline* means a name denoting a group of vehicles which has a degree of commonality in construction (*e.g.,* body, chassis). Carline does not consider any level of decor or opulence and is not generally distinguished by such characteristics as roof line, number of doors, seats, or windows, except for light duty trucks. Carline is not distinguished by country of manufacture, final assembly point, engine type, or driveline. Light duty trucks are considered to be different carlines than passenger cars. A carline includes all motor vehicles of a given nameplate. Special purpose vehicles, vans, and pickup trucks are classified as separate carlines.

(4) *Final assembly* means all operations involved in the assembly of a vehicle, performed at the final assembly point including but not limited to assembly of body panels, painting, final chassis assembly, trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using forming processes such as stamping, machining or molding processes.

(5) *Final assembly point* means the plant, factory, or other place, which is a building or series of buildings in close proximity, where a new passenger motor vehicle is produced or assembled from passenger motor vehicle equipment and from which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle whether or not such component parts are permanently installed in or on such vehicle. For multi-stage vehicles, the final assembly point is the location where the first stage vehicle is assembled.

(6) *Outside supplier* means:

(i) A non-allied supplier of passenger motor vehicle equipment to a manufacturer's allied supplier and

(ii) Anyone other than an allied supplier who ships directly to the manufacturer's final assembly point.

(7) *Passenger motor vehicle equipment* means any system, subassembly, or component received at the final assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser except: Nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights. Passenger motor vehicle equipment also includes any system, subassembly, or component received by an allied supplier from an outside supplier for incorporation into equipment supplied by the allied supplier to the manufacturer with which it is allied.

(8) *Person* means an individual, partnership, corporation, business trust, or any organized group of persons.

(9) *Ultimate purchaser* means with respect to any new passenger motor vehicle, the first person, other than a dealer purchasing in its capacity as a dealer, who in good faith purchases such new passenger motor vehicle for purposes other than resale.

§ 583.5 Label requirements.

(a) Except as provided in paragraphs (f) and (g) of this section, each manufacturer of new passenger motor vehicles shall cause to be affixed to each passenger motor vehicle manufactured on or after October 1, 1994, a label that provides the following information:

(1) *U.S./Canadian parts content.* The overall percentage, by value, of the passenger motor vehicle equipment that was installed on vehicles within the carline of which the vehicle is part, and that originated in the United States and/or Canada (the procedure for determining U.S./Canadian Parts Content is set forth in § 583.6);

(2) *Major sources of foreign parts content.* The names of any countries other than the United States and Canada which contributed at least 15 percent of the average overall percentage, by value, of the passenger motor vehicle equipment installed on vehicles within the carline of which the vehicle is part, and the percentages attributable to each such country (if there are more than two such countries, the manufacturer need only provide the information for the two countries with the highest percentages; the procedure for determining major foreign sources of passenger motor vehicle equipment is set forth in § 583.7);

(3) *Final assembly point.* The city, state (in the case of vehicles assembled in the United States), and country of the final assembly point of the passenger motor vehicle;

(4) *Country of origin for the engine.* The country of origin of the passenger motor vehicle's engine (this is referred to as the country of origin of the "engine parts" on the label; the procedure for making this country of origin determination is set forth in § 583.8);

(5) *Country of origin for the transmission.* The country of origin of the passenger motor vehicle's transmission (this is referred to as the country of origin of the "transmission parts" on the label; the procedure for making this country of origin determination is set forth in § 583.8);

(6) *Explanatory note.* A statement which explains that parts content does not include final assembly, distribution, or other non-parts costs.

(b) Except as provided in paragraphs (e), (f) and (g) of this section, the label required under paragraph (a) of this section shall read as follows, with the specified information inserted in the places indicated (except that if there are no major sources of foreign parts

content, omit the section "Major Sources of Foreign Parts Content"):

PARTS CONTENT INFORMATION

For vehicles in this carline:

U.S./Canadian Parts Content: (insert number) %

Major Sources of Foreign Parts Content:

(name of country with highest percentage): (insert number) %

(name of country with second highest percentage): (insert number) %

For this vehicle:

Final Assembly Point: (city, state, country)

Country of Origin:

Engine Parts: (name of country)

Transmission Parts: (name of country)

Note: Parts content does not include final assembly, distribution, or other non-parts costs.

(c) The percentages required to be provided under paragraph (a) of this section may be rounded by the manufacturer to the nearest 5 percent.

(d) The label required by paragraph (a) of this section shall:

(1) Be placed in a prominent location on each vehicle where it can be read from the exterior of the vehicle with the doors closed, and may be either part of the Monroney price information label required by 15 U.S.C. 1232, part of the fuel economy label required by 15 U.S.C. 2006, or a separate label. A separate label may include other consumer information.

(2)(i) Be printed in letters that have a color that contrasts with the background of the label; and

(ii) Have the information required by paragraphs (a)(1) through (5) of this section vertically centered on the label in boldface capital letters and numerals of 12 point size or larger; and

(iii) Have the information required by paragraph (a)(6) of this section in type that is two points smaller than the information required by paragraphs (a)(1) through (5) of this section.

(3) In the case of a label that is included as part of the Monroney price information label or fuel economy label, or a separate label that includes other consumer information, be separated from all other information on those labels by a solid line that is a minimum of three points in width.

(4) The information required by paragraphs (a)(1) through (6) of this section shall be immediately preceded by the words, "PARTS CONTENT INFORMATION," in boldface, capital letters that are 12 point size or larger.

(e) *Carlines assembled in the U.S./Canada and in one or more other countries.*

(1) If a carline is assembled in the U.S. and/or Canada, and in one or more other countries, the manufacturer may, at its option, add the following additional information at the end of the explanatory note specified in (a)(6), with the specified information inserted in the places indicated:

This carline is assembled in the U.S. and/or Canada, and in [insert name of each other country]. The U.S./Canadian parts content for the portion of the carline assembled in [insert name of country, treating the U.S. and Canada together, i.e., U.S./Canada] is [____]%.

(2) A manufacturer selecting this option shall divide the carline for purposes of this additional information into the following portions: the portion assembled in the U.S./Canada and the portions assembled in each other country.

(3) A manufacturer selecting this option for a particular carline shall provide the specified additional information on the labels of all vehicles within the carline.

(f) A final stage manufacturer of vehicles assembled in multiple stages need not provide the U.S./Canadian Parts Content or Major Foreign Sources items of the label otherwise required under paragraphs (a)(1) and (2) of this section.

(g) A manufacturer that produces a total of fewer than 1000 passenger motor vehicles in a model year need not provide the U.S./Canadian Parts Content or Major Foreign Sources items of the label otherwise required under paragraphs (a)(1) and (2) of this section.

(h) *Requests for information and certifications relevant to information on the label.*

(1) Each manufacturer and allied supplier shall request its suppliers to provide directly to it the information and certifications specified by this part which are necessary for the manufacturer/allied supplier to carry out its responsibilities under this part. The information shall be requested sufficiently early to enable the manufacturer to meet the timing requirements specified by this part.

(2) For requests made by manufacturers or allied suppliers to outside suppliers:

(i) The requester shall indicate that the request is being made pursuant to 49 CFR part 583, and that the regulation is administered by the National Highway Traffic Safety Administration;

(ii) The requester shall indicate that 49 CFR part 583 requires outside suppliers to provide specified information upon the request of a manufacturer or allied supplier to which it supplies passenger motor vehicle equipment and that, to the best of the requester's knowledge, the outside supplier is required to provide the requested information;

(iii) If any information other than that required by 49 CFR Part 583 is requested, the requester shall indicate which information is required by 49 CFR part 583 and which is not;

(iv) The requester shall indicate that 49 CFR part 583 specifies that while information may be requested by an earlier date, the outside supplier is not required to provide the information until the date specified by the requester or the date 45 days after receipt of the request, whichever is later.

(i) Manufacturers need not provide any of the information specified in this part for model year 1994 vehicles. For model year 1995 and model year 1996 carlines which are first offered for sale to ultimate purchasers before June 1, 1995, manufacturers and suppliers may, instead of following the calculation procedures set forth in this part, use procedures that they expect, in good faith, to yield similar results.

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5 (f) and (g), shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis, before the beginning of each model year. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. All value otherwise added at the final assembly point and beyond, including all final assembly costs, are excluded from the calculation of U.S./Canadian parts content.

(b) *Determining the value of items of equipment.*

(1) For items of equipment received at the final assembly point, the value is the price paid by the manufacturer for the equipment as delivered to the final assembly point.

(2) For items of equipment produced at the final assembly point (but not as part of final assembly), the value is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment.

(3) For items of equipment received at the factory or plant of an allied supplier, the value is the price paid by the allied supplier for the equipment as delivered to its factory or plant.

(c) *Determining the U.S./Canadian percentage of the value of items of equipment.*

(1) Equipment supplied by an outside supplier to a manufacturer or allied supplier is considered:

(i) 100 percent U.S./Canadian, if 70 percent or more of its value is added in the United States or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States or Canada.

(2) The extent to which an item of equipment supplied by an allied supplier is considered U.S./Canadian is determined by dividing the value added in the United States and Canada by the total value of the equipment. The resulting number is multiplied by 100 to determine the percentage U.S./Canadian content of the equipment.

(3) In determining the value added in the United States and Canada of equipment supplied by an allied supplier, any equipment that is delivered to the allied supplier by an outside supplier and is incorporated into the allied supplier's equipment, is considered:

(i) 100 percent U.S./Canadian, if at least 70 percent of its value is added in the United States or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States or Canada.

(4)(i) Value is added in the United States or Canada by an allied supplier or outside supplier to the extent that the supplier produces or assembles passenger motor vehicle equipment at a plant or factory located within the territorial boundaries of the United States or Canada.

(ii) In determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. Except as provided in (c)(3), material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. For any material which is imported into the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. Neither suppliers nor anyone else is required to trace the value added in the United States or Canada backwards; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign. *Example:* A supplier located in the United States or Canada uses sheet steel to produce exterior panels which are shipped to a final assembly plant. In determining the value added in the United States or Canada of the exterior panels, the supplier must subtract the price it paid for the sheet steel except to the extent that the supplier determines that the price paid represents value added in the United States or Canada.

(iii) For the minor items listed in the § 583.4 definition of "passenger motor vehicle equipment" as being excluded from that term, outside and allied suppliers may, to the extent that they incorporate such items into their equipment, treat the cost of the minor items as value added in the country of assembly.

(iv) For passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of its material originated in the United States or Canada.

(v) The payment of duty does not result in value added in the United States or Canada.

(5) If a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. This provision does not affect the obligation of manufacturers and allied suppliers to request this information from their suppliers or the obligation of the suppliers to provide the information.

(d) *Determination of the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment.* The percentage of the value of a carline's passenger motor vehicle equipment that is U.S./Canadian is determined by—

(1) Adding the total value of all of the equipment (regardless of country of origin) expected to be installed in that carline during the next model year;

(2) Dividing the value of the U.S./Canadian content of such equipment by the amount calculated in paragraph (d)(1) of this section, and

(3) Multiplying the resulting number by 100.

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

(a) Each manufacturer, except as specified in § 583.5 (f) and (g), shall determine the countries, if any, which are major foreign sources of passenger motor vehicle equipment and the percentages attributable to each such country for each carline on a model year basis, before the beginning of each model year. The manufacturer need only determine this information for the two such countries with the highest percentages. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. In making determinations under this section, the U.S. and Canada are treated together as if they were one (non-foreign) country.

(b) *Determining the value of items of equipment.* The value of each item of equipment is determined in the manner specified in § 583.6(b).

(c) *Determining the country of origin of items of equipment.*

(1) Except as provided in (c)(2), the country of origin of each item of equipment is the country which contributes the greatest amount of value added to that item.

(2) Instead of making country of origin determinations in the manner specified in (c)(1), a manufacturer may, at its option, use any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all items of equipment, and the U.S. and Canada are treated together.

(d) *Determination of the percentage of the total value of a carline's passenger motor vehicle equipment which is attributable to individual countries other than the U.S. and Canada.* The percentage of the value of a carline's passenger motor vehicle equipment that is attributable to each country other than the U.S. and Canada is determined on a model year basis by—

(1) Adding up the total value of all of the passenger motor vehicle equipment (regardless of country of origin) expected to be installed in that carline during the next model year;

(2) Adding up the value of such equipment which originated in each country other than the U.S. or Canada;

(3) Dividing the amount calculated in paragraph (d)(2) of this section for each country by the amount calculated in paragraph (d)(1) of this section, and multiplying each result by 100.

(e) A country is a major foreign source of passenger motor vehicle equipment for a carline only if the country is one other than the U.S. or Canada and if 15 or more percent of the total value of the carline's passenger motor vehicle equipment is attributable to the country.

(f) If the sum of the percentage U.S./Canadian parts content (determined under § 583.6) and the percentages of the two largest major foreign sources of content exceeds 100%, the major foreign source percentages are proportionately

reduced to the extent necessary to bring the sum down to 100%.

§ 583.8 Procedure for determining country of origin for engines and transmissions (for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only).

(a) Each supplier of an engine or transmission shall determine the country of origin once a year for each engine and transmission. The origin of engines shall be calculated for engines of the same displacement produced at the same plant. The origin for transmissions shall be calculated for transmissions of the same type produced at the same plant. Transmissions are of the same type if they have the same attributes including: Drive line application, number of forward gears, controls, and layout. The U.S. and Canada are treated separately in making such determination.

(b) The value of an engine or transmission is determined by adding up the prices paid by the manufacturer of the engine/transmission for each component comprising the engine/transmission, as delivered to the assembly plant of the engine/transmission, and the fair market value of each individual part produced at the plant. All value added at the engine/transmission plant is otherwise excluded from the calculation of origin. Individual parts refers to the most basic level of parts used to assemble an engine or transmission and not subassemblies.

(c) *Determining the country of origin of components.*

(1) Except as provided in (c)(2), the country of origin of each component is the country which contributes the greatest amount of value added to that item.

(2) Instead of making country of origin determinations in the manner specified in (c)(1), a manufacturer may, at its option, use any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all components.

(d) *Determination of the total value of an engine/transmission which is attributable to individual countries.* The value of an engine/transmission that is attributable to each country is determined by adding up the total value of all of the components installed in that engine/transmission which originated in that country.

(e) The country of origin of each engine and the country of origin of each transmission is the country which contributes the greatest amount of value added to that item of equipment.

§ 583.9 Attachment and maintenance of label.

(a) *Attachment of the label.*

(1) Except as provided in (a)(2), each manufacturer shall cause the label required by § 583.5 to be affixed to each new passenger motor vehicle before the vehicle is delivered to a dealer.

(2) For vehicles which are delivered to a dealer prior to the introduction date for the model in question, each manufacturer shall cause the label required by § 583.5 to be affixed to the vehicle prior to such introduction date.

(b) *Maintenance of the label.*

(1) Each dealer shall cause to be maintained each label on the new passenger motor vehicles it receives until after such time as a vehicle has been sold to a consumer for purposes other than resale.

(2) If the manufacturer of a passenger motor vehicle provides a substitute label containing corrected information, the dealer shall replace the original label with the substitute label.

(3) If a label becomes damaged so that the information it contains is not legible, the dealer shall replace it with an identical, undamaged label.

§ 583.10 Outside suppliers of passenger motor vehicle equipment.

(a) For each unique type of passenger motor vehicle equipment for which a manufacturer or allied supplier requests information, the outside supplier shall provide the manufacturer/allied supplier with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the unique type of equipment;

(3) The price of the equipment to the manufacturer or allied supplier;

(4) A statement that the equipment has, or does not have, at least 70 percent of its value added in the United States and Canada, determined under § 583.6(c);

(5) For equipment which has less than 70 percent of its value added in the United States and Canada, the country of origin of the equipment, determined under § 583.7(c);

(6) For equipment that may be used in an engine or transmission, the country of origin of the equipment, determined under § 583.8(c);

(7) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(8) A single certificate may cover multiple items of equipment.

(b) The information and certification required by paragraph (a) of this section shall be provided to the manufacturer or allied supplier no later than 45 days after receipt of the request, or the date specified by the manufacturer/allied supplier, whichever is later. (A manufacturer or allied supplier may request that the outside supplier voluntarily provide the information and certification at an earlier date.)

(c)(1) Except as provided in paragraph (c)(2) of this section, the information provided in the certificate shall be the supplier's best estimates of price, content, and country of origin for the unique type of equipment expected to be supplied during the 12 month period beginning on the first July 1 after receipt of the request. If the unique type of equipment supplied by the supplier is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its estimates on expected averages for these factors.

(2) The 12 month period specified in (c)(1) may be varied in time and length by the manufacturer or allied supplier if it determines that the alteration is not likely to result in less accurate information being provided to consumers on the label required by this part.

(d) For outside suppliers of engines and transmissions, the information and certification required by this section is in addition to that required by § 583.12.

§ 583.11 Allied suppliers of passenger motor vehicle equipment.

(a) For each unique type of passenger motor vehicle equipment which an allied supplier supplies to the manufacturer with which it is allied, the allied supplier shall provide the manufacturer with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the unique type of equipment;

(3) The price of the equipment to the manufacturer;

(4) The percentage U.S./Canadian content of the equipment, determined under § 583.6(c);

(5) The country of origin of the equipment, determined under § 583.7(c);

(6) For equipment that may be used in an engine or transmission, the country of origin of the equipment, determined under § 583.8(c);

(7) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(8) A single certificate may cover multiple items of equipment.

(b)(1) Except as provided in paragraph (b)(2) of this section, the information

provided in the certificate shall be the supplier's best estimates of price, content, and country of origin for the unique type of equipment expected to be supplied during the 12 month period beginning on the first July 1 after receipt of the request. If the unique type of equipment supplied by the supplier is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its estimates on expected averages for these factors.

(2) The 12 month period specified in (b)(1) may be varied in time and length by the manufacturer if it determines that the alteration is not likely to result in less accurate information being provided to consumers on the label required by this part.

(d) For allied suppliers of engines and transmissions, the information and certification required by this section is in addition to that required by § 583.12.

§ 583.12 Suppliers of engines and transmissions.

(a) For each engine or transmission for which a manufacturer or allied supplier requests information, the supplier of such engine or transmission shall provide the manufacturer or allied supplier with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the engine or transmission;

(3) The country of origin of the engine or transmission, determined under § 583.8;

(4) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(b) The information provided in the certificate shall be the supplier's best estimate of country of origin for the unique type of engine or transmission. If the unique type of equipment used in the engine or transmission is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its country of origin determination on expected averages for these factors.

(c) The information and certification required by paragraph (a) of this section shall be provided by outside suppliers to the manufacturer or allied supplier no later than 45 days after receipt of the request, or the date specified by the manufacturer/allied supplier, whichever is later. (A manufacturer or allied supplier may request that the outside supplier voluntarily provide the information and certification at an earlier date.)

(d) In the event that, during a model year, a supplier of engines or transmissions produces an engine of a new displacement or transmission of a new type or produces the same engine displacement or transmission in a different plant, the supplier shall notify the manufacturer of the origin of the new engine or transmission prior to shipment of the first engine or transmission that will be installed in a passenger motor vehicle intended for public sale.

(e) A single certificate may cover multiple engines or transmissions. If a certificate provided in advance of the delivery of an engine or transmission becomes inaccurate because of changed circumstances, a corrected certificate shall be provided no later than the time of delivery of the engine or transmission.

(f) For suppliers of engines and transmissions, the information and certification required by this section is in addition to that required by §§ 583.10 and 583.11.

§ 583.13 Supplier certification and certificates.

Each supplier shall certify the information on each certificate provided under §§ 583.10, 583.11, and 583.12 by including the following phrase on the certificate: "This information is certified in accordance with DOT regulations." The phrase shall immediately precede the other information on the certificate. The certificate may be submitted to a manufacturer or allied supplier in any mode (e.g., paper, electronic) provided the mode contains all information in the certificate.

§ 583.14 Currency conversion rate.

For purposes of calculations of content value under this part, manufacturers and suppliers shall calculate exchange rates using the methodology set forth in this section.

(a) *Manufacturers.* (1) Unless a manufacturer has had a petition approved by the Environmental Protection Agency under 40 CFR 600.511–80(b)(1), for all calculations made by the manufacturer as a basis for the information provided on the label required by § 583.5, manufacturers shall take the mean of the exchange rates in effect at the end of each quarter set by the Federal Reserve Bank of New York for twelve calendar quarters prior to and including the calendar quarter ending one year prior to the date that the manufacturer submits information for a carline under § 583.17.

(2) A manufacturer that has had a petition approved by the Environmental Protection Agency under 40 CFR 600.511–80(b)(1), which provides for a different method of determining exchange rates, shall use the same method as a basis for the information provided on the label required by § 583.5, and shall inform the Administrator of the exchange rate method it is using at the time the information required by § 583.5 is submitted.

(b) *Suppliers.* For all calculations underlying the information provided on each certificate required by §§ 583.10, 583.11, and 583.12, suppliers shall take the mean of the exchange rates in effect at the end of each quarter set by the Federal Reserve Bank of New York for twelve calendar quarters prior to and including the calendar quarter ending one year prior to the date of such certificate.

§ 583.15 Joint ownership.

(a) A carline jointly owned and/or produced by more than one manufacturer shall be attributed to the single manufacturer that markets the carline, subject to paragraph (b) of this section.

(b)(1) The joint owners of a carline may designate, by written agreement, the manufacturer of record of that carline.

(2) The manufacturer of record is responsible for compliance with all the manufacturer requirements in this part with respect to the jointly owned carline. However, carline determinations must be consistent with § 583.4(3).

(3) A designation under this section of a manufacturer of record is effective beginning with the first model year beginning after the conclusion of the written agreement, or, if the joint owners so agree in writing, with a specified later model year.

(4) Each manufacturer of record shall send to the Administrator written notification of its designation as such not later than 30 days after the conclusion of the written agreement, and state the carline of which it is considered the manufacturer, the names of the other persons which jointly own the carline, and the name of the person, if any, formerly considered to be the manufacturer of record.

(5) The joint owners of a carline may change the manufacturer of record for a future model year by concluding a written agreement before the beginning of that model year.

(6) The allied suppliers for the jointly owned carline are the suppliers that are wholly owned by any of the manufacturers of the jointly owned carline.

§ 583.16 Maintenance of records.

(a) *General.* Each manufacturer of new passenger motor vehicles and each supplier of passenger motor vehicle equipment subject to this part shall establish, maintain, and retain in organized and indexed form, records as specified in this section. All records, including the certificates provided by suppliers, may be stored in any mode provided the mode contains all information in the records and certificates.

(b) *Manufacturers.* Each manufacturer shall maintain all records which provide a basis for the information it provides on the labels required by § 583.5, including, but not limited to, certificates from suppliers, parts lists, calculations of content, and relevant contracts with suppliers. The records shall be maintained for five years after December 31 of the model year to which the records relate.

(c) *Suppliers.* Each supplier shall maintain all records which form a basis for the information it provides on the certificates required by §§ 583.10, 583.11, and 583.12, including, but not limited to, calculations of content, certificates from suppliers, and relevant contracts with manufacturers and suppliers. The records shall be maintained for six years after December 31 of the calendar year set forth in the date of each certificate.

§ 583.17 Reporting.

For each model year, manufacturers shall submit to the Administrator 3 copies of the information required by § 583.5(a) to be placed on a label for each carline. The information for each carline shall be submitted not later than the date the first vehicle of the carline is offered for sale to the ultimate purchaser.

Issued on: July 14, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–17574 Filed 7–18–94; 8:45 am]

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federal register

Thursday
July 21, 1994

Part III

Department of Housing and Urban Development

NOFA for Public and Indian Housing Family Investment Centers; Notice of Demonstration

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3714; FR–3397–N–06]

NOFA for Public and Indian Housing Family Investment Centers: Notice of Demonstration

AGENCY: Office of the Assistant Secretary for Public and Indian Housing; Office of Policy Development and Research; and Special Actions Office, HUD.

ACTION: Notice of demonstration program.

SUMMARY: This Notice announces the Department's intention to contribute up to $1 million from the Family Investment Center (FIC) program to assist in developing a center to anchor an integrated family support network in the Sandtown-Winchester neighborhood of Baltimore, Maryland. The system of services and outreach to which the demonstration will contribute will increase the intensity and variety of educational and supportive services available to eligible residents. The Department had indicated in a Notice of Funding Availability published earlier (59 FR 9592, 9592; February 28, 1994) that it would be publishing notice of such a demonstration. This notice provides guidelines for the use of these funds and invites comments on the proposed demonstration.

DATES: Comment due date: September 6, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Valerie Piper, Special Projects Officer, Special Actions Office, Room 10232, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1547 (TDD users may call the Federal Information Relay Service at (202) 708–9300 or 1–800–877–8339). (Other than the "800" number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements that would be applicable through this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0189.

Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FICs). On February 28, 1994, the Department published a Notice of Funding Availability announcing the first competition for grant funds under the program (59 FR 9592; amended at 59 FR 18570 (April 19, 1994) and 59 FR 29816 (June 9, 1994)). In the February 28 notice, the Department also indicated that it:

> * * * intends to use $1 million for purposes of demonstrating ways for families living in public and Indian housing in a neighborhood undergoing a concentrated effort of local revitalization to gain access to education and employment activities to achieve self-sufficiency and independence, by enabling housing authorities to develop training and support services. These funds will be used to mobilize public and private resources to expand and improve delivery of services, to provide funding for essential training and support services that cannot otherwise be funded, to improve the capacity of management to assess the training and services needs of eligible families, to coordinate the provision of training and services that meet such needs and to ensure the long-term provision of such training and services. The Department expects that this funding will demonstrate the importance of comprehensive support services in contributing to the local neighborhood revitalization.
>
> 59 FR 9592 (February 28, 1994)

In accordance with the requirements of section 470(a) of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 3542), this notice describes the proposed demonstration and invites public comment. Any changes made in this demonstration as a result of the Department's consideration of public comments, and any extension of time for the commitment of funds necessary because of these changes, also will be published in the **Federal Register**. The Department will not commit funds for the proposed demonstration until after the latest of: (1) the date the Department has considered any comments received in response to this notice; (2) September 19, 1994, which is 60 days after today's publication date; and (3) the date the Department has received and approved an application that meets the requirements imposed in this notice and any subsequent notice announcing changes in the demonstration. If funds are committed for this demonstration, the Department also will publish in the **Federal Register** a notice announcing this fact.

Background of Demonstration

Community Building in Partnership (CBP) is a long-term partnership between the residents of the Sandtown-Winchester neighborhood, the City of Baltimore (Maryland), and The Enterprise Foundation. CBP acts as a focal point for coordinated planning and action to achieve objectives set by the residents of Sandtown-Winchester, as supported by planning professionals and City staff, over a two-year planning and program design period. The Housing Authority of Baltimore City (HABC) also is integrally involved in the effort to transform the neighborhood, which contains over 850 units of public housing.

For purposes of this demonstration, the Department will make up to $1 million available to the HABC for use in establishing a FIC in the Sandtown-Winchester neighborhood. The funding will be used in accordance with the statutory requirements of the FIC program to contribute to an integrated network of supportive services for public housing and other neighborhood residents.

The system of services and outreach planned by the community, CBP, the City, and the HABC will not only increase the intensity and variety of educational and supportive services available to neighborhood residents, it will also establish a delivery system involving residents who will work with neighbors to ensure progression towards self-sufficiency. Residents involved as "Family Advocates" will work with trained social workers to manage the most complex cases. Together with service providers, the advocates and case workers will form "Family Support Teams" and will create a new system to integrate, at the community level, the multiple supportive service programs that affect most Sandtown-Winchester residents.

The focal point of this service provision and outreach activity will be a Family Resource Center located in a City-owned facility on Mount Street in Sandtown-Winchester. Most of the funding provided under this demonstration will be used to renovate and expand the Mount Street facility. Remaining funds will be used for service coordination by the Family Support Teams and for core support

services. Core support services will help families and individuals to overcome personal difficulties that inhibit their readiness to work, and will include such services as literacy and G.E.D. training and drop-in day care.

In addition to the FIC funding proposed under this demonstration, public and private organizations will support the Family Resource Center, its core services, and the Family Support Teams. This network will deliver necessary services to public housing residents as part of the larger community, through the community-wide system developed by HABC, the City, and CBP. The Department believes that the institutional integration—of which this demonstration will be one part—will enhance the quality, continuity, and impact of support provided to public housing residents. HABC will be a particularly active partner in this endeavor, drawing upon its experience with the Family Development Center at Lafayette Courts, which provided one of the models for the national FIC program.

Core support services and Family Support Team activities supported by FIC funding provided under this demonstration will be targeted to ensure that a proportionate number of public housing families are served. Funding from other sources will support the provision of services to other neighborhood residents. Private foundations and the City of Baltimore have both committed funding and in-kind donations to the project. The Department expects that this demonstration will leverage more public and private funding as the project progresses.

The Department will allocate up to $1 million to HABC to carry out its part of the project, pending receipt and approval of an application that is consistent with program and submission requirements as established in this notice and any subsequent notice issued after the comment period has closed.

Sandtown-Winchester

Throughout the nation, collaborations between community-based organizations and private foundations are establishing partnerships to address the full range of human needs in disadvantaged communities—public safety, education, job training and placement, health and human services, housing and open space development, and others. These comprehensive community development and revitalization efforts seek not only to accomplish specific projects, but also to build community-based institutions that will continue to provide for residents' needs over the long term. Government at the local, State and Federal levels, as well as corporate partners and intermediary development organizations, have become involved in these projects to varying degrees.

In Baltimore, the CBP comprehensive community-based strategy is especially well-advanced. Working with the CBP, the City of Baltimore and its Housing Authority have made the transformation of the Sandtown-Winchester neighborhood one of their highest priorities. The CBP partnership aims to "transform all of the dysfunctional conditions and systems in Sandtown to enable all residents to achieve their highest potential." The dysfunctional systems the partnership addresses cross the full range of typical public and human services.

Additional Federal, State, and private participants in the transformation of the neighborhood include: the United States Departments of Housing and Urban Development, Transportation, and Health and Human Services; the Maryland State Housing Finance Agency and Community Development Agency; the National Community Development Initiative; the Kellogg Foundation; the Abell Foundation; the Mott Foundation; the Goldseker Foundation; the Strauss Foundation; Baltimore Gas & Electric Company; NationsBank; Habitat for Humanity; local churches; and many local community development groups, including Baltimoreans United in Leadership Development.

The community of Sandtown-Winchester contains the 571-unit Gilmor Homes public housing development, as well as over 300 scattered-site public housing units. Nearly half of Sandtown-Winchester residents able to work are unemployed; one-third of the residents have no health insurance. The rate of death from influenza and pneumonia is 2.5 times that of the City of Baltimore. The rate of HIV infection is double that of the City, and is sixth in the State of Maryland. Students in local public schools consistently perform far below state standards on reading, writing, and math tests, and absenteeism is a major problem. Forty-nine percent of all residents live in poverty, and five of six poor children live in single-parent households headed by women. The Sandtown-Winchester crime rate is one of the highest in the City. Typical systems for delivering basic public services of employment, human services, health, education, housing, and public safety have not met the complex and interrelated needs of the residents in Sandtown-Winchester, who have needs typical of residents in many disadvantaged neighborhoods throughout the nation.

Large amounts of resources have flowed into the neighborhood from various public and private sources, particularly from government programs meant to address only distinct elements of the many interrelated problems, which have persisted from generation to generation, that are faced by Sandtown-Winchester's residents. CBP is working to change the delivery systems for these programs and resources, to make these services and housing opportunities more accessible to and effective for neighborhood residents. Through the Family Support Teams that will work with clients and their changing needs, the Family Resource Center will transform the delivery system for supportive services from a fragmented maze into a highly responsive personal- and neighborhood-based system.

In addition to the core services planned to be available at the Family Resource Center, public housing and other residents of the Sandtown-Winchester neighborhood will be able to access other CBP and partner activities and programs. The Family Resource Center, with its outreach and case management capabilities, will identify residents' needs, connect them to neighborhood-based and City-wide service providers, and monitor their clients' progress.

Programs available to residents will include community-based job training, job placement and small business technical assistance, and health care that is focused on preventative measures and primary health care needs. A new Neighborhood Development Center has begun to coordinate the efforts of several community development corporations and other housing providers to construct or renovate housing in the area and to offer counselling and referrals for rental, special needs, and ownership opportunities. Plans to treat substance abuse in the neighborhood include residential, outpatient, support group, and in-home counselling. Youth education and activities programs will include targeted outreach to children from birth to five years of age, to ensure school readiness through a variety of support strategies. Extensive school to work programs and expanded summer recreation and after-school activities involving parents are also planned.

Because of the initiative already taken at the local level and the working partnership forged there, the Sandtown-Winchester neighborhood transformation project is an ideal demonstration environment for service delivery integrated across existing

Federal program lines. Too often, the requirements of Federal programs have dictated institutional structures at the local level that stand in the way of comprehensive delivery of housing and services to those who need these services to achieve self-sufficiency. The City of Baltimore, HABC, and the community have all come together, supported by The Enterprise Foundation and many private contributors, to implement the Sandtown-Winchester neighborhood transformation. This coordination creates a rare opportunity for the Department to test the capacity of its existing programs to serve in the context of a truly integrated and comprehensive transformation effort.

Applicable Requirements

Through this demonstration, the Department will explore ways to encourage neighborhood transformation partnerships by, for example, meshing its programs to the needs of the local agencies to coordinate the delivery of programs and services. The strategy to which the demonstration will contribute will integrate public housing residents fully into the services and activities available to the rest of the community, in order to reduce the isolation often imposed by different institutional delivery systems acting within small geographical areas.

In order to receive the funding proposed in this notice, the HABC will be required to meet the applicable programmatic and application requirements set out in the NOFA for Public and Indian Housing Family Investment Centers (published at 59 FR 9592 (February 28, 1994), and amended at 59 FR 18570 (April 19, 1994) and 59 FR 29816 (June 9, 1994)) and any subsequent notice that is published after the comment period has closed.

When applicable, the certifications, findings, determinations, and requirements listed by the Department under the "Other Matters" section of that NOFA also apply to this notice.

Authority: 42 U.S.C. 1437t, 3535(d), and 3542.

Dated: June 28, 1994.

MaryAnn M. Russ,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–17704 Filed 7–20–94; 8:45 am]

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federal register

Thursday
July 21, 1994

Part IV

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans: Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–951]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families (ACF), DHHS.

ACTION: Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiian, Alaska Natives and Native American Pacific Islanders.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1995 funds in four competitive areas: (1) governance and social and economic development; (2) governance and social and economic development for Alaska Native entities; (3) environmental regulatory enhancement; and (4) Native American languages preservation and enhancement.

Financial assistance provided by ANA promotes the goal of self-sufficiency for Native Americans through support of projects in these four areas.

APPLICATION KIT: Application kits, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201–0001, Attention: 93612–951, Telephone: (202) 401–7260.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1995 funds, authorized under the Native American Programs Act (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in four competitive areas.

In order to streamline the application process for eligible Native American applicants, ANA is issuing one program announcement announcing fiscal year 1995 funds. Therefore, information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for each competitive area is now in one comprehensive announcement.

In previous years, the Administration for Native Americans promoted the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. Amendments to the Native American Programs Act have expanded ANA's granting authority to establish two additional programs for (1) environmental regulatory enhancement, and (2) Native American languages preservation and enhancement.

Projects are awarded funds under sections 803(a), 803(d) and 803C of the Native American Programs Act of 1974, as amended (Public Law 93–644, 88 Stat. 2324, 42 U.S.C. 2991b).

The Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Native American Languages Act of 1992 (Public Law 102–524) authorizes financial assistance for projects to promote the survival and continuing vitality of Native American languages (Section 803C of the Native American Programs Act of 1974, as amended).

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 1995, and the availability of funds for the four competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the evaluation criteria under each respective competitive area in this announcement.

Eligible applicants may compete for and receive a grant award in each of the three competitive areas. However, ANA continues its policy that an applicant may only submit one application per competitive area.

This program announcement consists of three parts.

PART I—ANA POLICY AND GOALS

Provides general information about ANA's policies and goals for the four competitive areas.

PART II—ANA COMPETITIVE AREAS

Describes the four competitive areas under which ANA is requesting applications:

- Governance, Social and Economic Development (SEDS);
- Governance, Social and Economic Development (SEDS) for Alaska Native entities;
- Environmental Regulatory Enhancement; and
- Native American Languages Preservation and Enhancement.

Each competitive area includes the following sections which provide area-specific information to be used in developing a funding application:

A Purpose and Availability of Funds;
B Background;
C Proposed Projects to be Funded;
D Eligible Applicants;
E Grantee Share of the Project;
F Review Criteria;
G Application Due Date(s); and
H Contacts to Obtain Further Information

PART III—GENERAL APPLICATION INFORMATION AND GUIDANCE

Provides information and guidance that applies to all four competitive areas and that must be taken into account in developing an application in any of the four areas.

PART I—ANA POLICY AND GOALS

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

2. *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.

3. *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

The Administration for Native Americans assists eligible applicants in

the four competitive areas to undertake one to three year development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency. For each type of project, applicants must describe a concrete locally-determined strategy to carry out a proposed project with fundable objectives and activities.

Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

PART II—ANA COMPETITIVE AREAS

The four competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, requirements, and review criteria. However, most of the requirements are standard for all applications to be submitted under this program announcement. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

An applicant may submit a separate application under any of the competitive areas described in this Part, as long as the applicant meets the eligibility requirements that are listed separately under each area. Applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2. An Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the same closing date.

ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1995 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately $14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. In fiscal year 1995, ANA anticipates awarding approximately 120 competitive grants ranging from $30,000 to $1,000,000 under this competitive area.

B. Background

To achieve its goals, ANA supports tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy is based on the use of the following definitions:

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health, economic well-being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

In discussing their community-based, long-range goals, and the objectives for the proposed projects, ANA recommends that non-Federally recognized and off-reservation groups include a description of what constitutes their specific community.

ANA encourages the development and maintenance of comprehensive strategic plans which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

C. Proposed Projects To Be Funded

This section provides descriptions of activities which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives.

The types of projects which ANA may fund include, but are not limited to, the following:

Governance

- Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or

the development of tribal court systems);

• Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);

• Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, by either treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States.

• Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgement or in response to any obvious deficiencies cited by the Bureau of Acknowledgement and Research (BAR), Department of Interior, in a petition from a Native group seeking Federal recognition; and

• Amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

Economic Development

• Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, light and/or heavy manufacturing, construction, housing and fisheries or aquaculture;

• Stabilizing and diversifying a Native community's economic base through business development ventures;

• Creation of microenterprises or private sector development; and

• Establishment or expansion of businesses and jobs that utilize Indian tax incentives passed in the Omnibus Budget Reconciliation Act of 1993.

Social Development

• Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;

• Developing local and intertribal models related to comprehensive planning and delivery of services;

• Developing programs or activities to preserve and enhance tribal heritage and culture; and

• Establishing programs which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

D. Eligible Applicants

Current ANA SEDS grantees whose project period terminates in fiscal year 1995 (October 1, 1994–September 30, 1995) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

• Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 Federal Register notice, 58 Fed. Reg. 54. 364(1993));

• Consortia of Indian Tribes;

• Incorporated non-Federally recognized Tribes;

• Incorporated nonprofit multi-purpose community-based Indian organizations;

• Urban Indian Centers;

• National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

• Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

• Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

• Nonprofit Native organizations in Alaska with village specific projects;

• Public and nonprofit private agencies in Hawaii serving Native Hawaiians;

• Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (These agencies may be located on these islands or in the United States); and

• Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% total project cost).

While we encourage applicants to secure non-Federal funds for their match, the non-Federal share may be satisfied through other Federal funding sources, provided the other Federal program source relates to the proposed ANA project, as follows:

• Indian Child Welfare funds, through the Department of Interior;

• Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and

• Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in the Background section of this competitive area), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Long-range goals and available resources.* (15 points) (a) The application explains how specific social, governance and economic long-range community goals relate to the proposed project and strategy. It explains how the community intends to achieve these goals. It documents the type of involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated social and economic development strategy (SEDS).

Note: Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is *not* considered a binding commitment of outside resources.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

(2) *Organizational capabilities and qualifications.* (10 points). (a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or résumés of key personnel, including those of consultants, are presented. The position descriptions and résumés relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Résumés demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the résumés contain the qualifications and/or specialized skills necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) *Project objectives, approach and activities.* (45 points). The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or benefits expected.* (20 points). Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points). There is a detailed, and fully explained, budget provided for each budget period requested. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement). Sufficient cost and other necessary details are included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

G. Application Due Date

The closing dates for submission of applications under this competitive area are: October 21, 1994, February 10, 1995, and May 19, 1995.

H. For Further Information Contact

Lucille Dawson (202) 690–6306, Hank Aguirre (202) 690–6439, or Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., Room 348–F, Washington, DC 20201–0001.

Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1995 funds for Alaska Native social and economic development projects. Approximately $1.5 million of financial assistance is anticipated to be available under this competitive area for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 15–18 grants under this competitive

area. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to $150,000, commensurate with approved multi-village objectives.

B. Background

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. However, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

C. Proposed Projects To Be Funded

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

Governance

- Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;
- Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;
- Develop agreements between the State and villages that transfer programs jurisdictions, and/or control to Native entities;
- Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;
- Assist in status clarification activities;
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;
- Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);
- Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;
- Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

Economic Development

- Assist villages in developing businesses and industries which: (1) use local materials; (2) create jobs for Alaska Natives; (3) are capable of high productivity at a small scale of operation; and (4) complement traditional and necessary seasonal activities;
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;
- Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;
- Assist in the establishment or expansion of new native-owned businesses; and
- Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

- Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;
- Develop local models related to comprehensive planning and delivery of social services;
- Develop new service programs, initially established with ANA funds, which will be funded for continued operation (after the ANA grant terminates) by local communities or the private sector;
- Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;
- Assist in obtaining licenses to provide housing or related services from State or local governments; and
- Develop businesses to provide relief for caretakers needing respite from human service-related care work.

D. Eligible Applicants

Current ANA SEDS grantees in Alaska whose project period terminates in fiscal year 1995 (October 1, 1994–September 30, 1995) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes in Alaska (as listed by the Bureau of Indian Affairs in an October 21, 1993 Federal Register notice, 58 Fed. Reg. 54. 364(1993));
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
- Nonprofit Native organizations in Alaska with village specific projects.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

Under each competitive area, ANA will only accept one application which

serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% total project cost).

While we encourage applicants to secure non-Federal funds for their match, the non-Federal share may be satisfied through other Federal funding sources, provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area (1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Long-range goals and available resources.* (15 points). (a) The application explains how specific social, governance and economic long-range community goals relate to the proposed project and strategy. It explains how the community intends to achieve these goals. It documents the type of involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated social and economic development strategy (SEDS).

Note: Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.

(b) Available resources (other than ANA and the non-Federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is *not* considered a binding commitment of outside resources.

(2) *Organizational capabilities and qualifications.* (10 points). (a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project objectives, approach and activities. (45 points). The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that *each* of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;

Can be accomplished with the available or expected resources during the proposed project period;

Indicates when the objective, and major activities under each objective, will be accomplished;

Specifies who will conduct the activities under each objective; and

Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points). Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided

in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points). There is a detailed, and fully explained, budget provided for each budget period requested. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other necessary details are included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

G. Application Due Date

The closing date for submission of applications under this competitive area is: May 19, 1995.

H. For Further Information Contact:

Hank Aguirre (202) 690–6439, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, S.W., Room 348–F, Washington, D.C. 20201–0001.

Competitive Area 3. Indian Environmental Regulatory Enhancement Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1995 funds for environmental regulatory enhancement projects. Approximately $3 million of financial assistance is anticipated to be available under this announcement for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000.

B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before Congressional committees include:

- The need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- The lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- The lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality.

As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Development of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

C. Proposed Projects To Be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure the tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993));
- Incorporated non-Federally recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.

The following organizations are not eligible to apply:

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, Palau, or the Commonwealth of Northern Mariana Islands;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a

Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirement through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% of total project cost).

The non-Federal share may be met by cash or through the provision of in-kind property or services, but only to the extent that cash or property is from any source (including any Federal agency where legislation or regulation authorizes using specific types of funds for a match) other than a program, contract or grant authorized under the Native American Programs Act of 1974, as amended. An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Long-range goals and available resources.* (15 points). (a) The application explains how the specific environmental regulatory enhancement goal(s) relates to the proposed project. The description includes local objectives related to the program purpose of this competitive area. The discussion should highlight specific environmental regulatory needs and explain how the community intends to achieve the goal. It documents the type of involvement and support of the community in the planning and implementation of the project. The application has a clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

(b) Available resources (other than ANA and the non-Federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA money. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is not considered a binding commitment of outside resources.

(2) *Organizational capabilities and qualifications.* (15 points). (a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) *Project objectives, approach and activities.* (40 points). The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or benefits expected.* (20 points). Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points). There is a detailed, and fully explained, budget with comprehensive narrative provided for each budget period requested. It

justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other necessary details are included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

G. Application Due Date

The closing date for submission of applications under this competitive area is March 3, 1995.

H. For Further Information Contact

Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., SW., room 348–F, Washington, DC 20201–0001.

Competitive Area 4. Native American Languages Preservation and Enhancement Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1995 funds for projects which assist Native Americans to assure the survival and continuing vitality of their languages. Approximately $1 million of financial assistance is anticipated to be available under this announcement for projects to promote the survival and continuing vitality of Native American languages.

For Category I, Planning Grants, the funding level for a budget period of 12 months will be up to $50,000. For Category II, Design and/or Implementation Grants, the funding level for a budget period of 12 months will be up to $125,000.

B. Background

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past five hundred years. Consequently, the Native American Languages Act was enacted (Title I, Public Law 101–477) to address this decline.

This legislation invested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declared that it is the policy of the United States to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages." While the Congress made a significant first step in passing this legislation in 1990, it served only as a declaration of policy. No program initiatives were proposed, nor any funds authorized to enact any significant programs in furtherance of this policy.

In 1992, Congressional testimony provided estimates that of the several hundred languages that once existed, only about one hundred and fifty-five (155) languages are still spoken or remembered today. However, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken only by the most elderly.

In response to this testimony, the Congress passed the Native American Languages Act of 1992 (Public Law 102–524) to assist Native Americans in assuring the survival and continuing vitality of their languages. Passage of this law is an important second step in attempting to ensure the survival and continuation of Native American languages, as it provides the basic foundation upon which the Tribal nations can rebuild their economic strength and rich cultural diversity.

While the Federal government recognizes that substantial loss of Native American languages has occurred over the past several hundred years, the nature and magnitude of the status of Native American languages will be better defined when eligible applicants have completed language assessments.

The Administration for Native Americans (ANA) believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. This belief supports the ANA principle that the local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs which support the community's long range goals.

Therefore, since preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity, activities proposed under this program announcement will contribute to the social development of a native community and significantly contribute to its path toward self-sufficiency.

The Administration for Native Americans recognizes that eligible applicants must have the opportunity to develop their own language plans, technical capabilities and access to the necessary financial and technical resources in order to assess, plan, develop and implement programs to assure the survival and continuing vitality of their languages. ANA also recognizes that potential applicants may have specialized knowledge and capabilities to address specific language concerns at various levels. This competitive area reflects these special needs and circumstances.

C. Proposed Projects To Be Funded

Applicants may apply for 12-month Planning Grants, under Category I, or for projects of up to 36 months duration under Category II, Design and/or Implementation Grants.

Category I—Planning grants. The purpose of the planning grants is to conduct the assessment and planning needed to identify the current status of the Native American language(s) to be addressed and to establish community long-range language goal(s).

These activities may include, but are not limited to, the following:

- Data collection, compilation and analysis to ascertain current language status through "formal" (e.g., work performed by a linguist, and/or a language survey conducted by community members) or "informal" (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members) methods;
- Establishment of the community's long-range language goals; and
- Acquisition of the necessary training and technical assistance to assure the achievement of the project goal(s).

Category II—Design and/or implementation grants. The purpose of design and/or implementation grants is to allow communities to design and/or implement, as appropriate to the applicant, a language program or programs that will contribute to the achievement of the community's long-range language goal(s). Applicants under Category II must be able to document that: (a) language statistics have been collected and analyzed, and that these statistics are current (compiled within thirty-six months prior to the grant application); (b) that the community has established long-range language goals; and (c) that community representatives are adequately trained to achieve the proposed project goals.

Under Category II grants, applicants may include the purchase of specialized equipment (including audio and video recording equipment, computers, and software) which is necessary to accomplish project objectives. The applicant must fully justify the need for

this equipment and explain how it will assist them in achieving their project objectives.

The types of activities ANA is seeking to fund under Category II grants include, but are not limited to, the following:

- Establishment and support of community Native American language projects to bring older and younger Native Americans together to facilitate and encourage the transfer of Native American language skills from one generation to another;
- Establishment of projects to train Native Americans to teach Native American languages to others or to enable them to serve as interpreters or translators of such languages;
- Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;
- Establishment or support of projects to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American languages; and
- Compilation, transcription, and analysis of oral testimony to record and preserve Native American languages.

The Institute of American Indian and Alaska Native Culture and Arts Development is established by the Act as the repository for copies of products from Native American languages grants funded under this program announcement. Products of Native American languages grants funded by this program announcement must be transmitted to this designated repository. Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993)) are not required to comply with this provision.

D. Eligible Applicants

The following organizations are eligible to apply for funding under this competitive area:

- Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993));
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies in Hawaii serving Native Hawaiians;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (These agencies may be located on these islands or in the United States); and
- Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

Participating organizations. If a tribal organization, or other eligible applicant, decides that the objectives of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a tribal school, college, or university, the applicant shall identify such school, college, or university as a participating organization in its application. Under a partnership agreement, the applicant will be responsible for the fiscal, administrative and programmatic management of the grant.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% total project cost).

The non-Federal share may include funds distributed to a tribe, including interest, by the Federal government:

- Pursuant to the satisfaction of a claim made under Federal law;
- From funds collected and administered on behalf of such tribe or its constituent members; or
- For general tribal administration or tribal development under a formula or subject to a tribal budgeting priority system, such as, but not limited to, funds involved in the settlement of land or other judgment claims, severance or other royalty payments, or payments under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or tribal budget priority system.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications submitted as a partnership arrangement with a school, college, or university, may use contributions from the "partner" organization(s) to meet the non-Federal share, as appropriate. Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

F. Review Criteria

A proposed project should reflect the Native American languages purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Current status of Native American language(s) addressed and description(s) of existing programs/projects (if any) which support the*

language(s) addressed. (10 points). (a) The application fully describes the current status of the Native American language(s) to be addressed; current status is defined as data compiled within the previous thirty-six (36) months. The description of the current status minimally includes the following information: (1) number of speakers; (2) age of speakers; (3) gender of speakers; (4) level(s) of fluency; (5) number of first language speakers (the Native language is the first language acquired); (6) number of second language speakers (the Native language is the second language acquired); (7) where the language is used (specific uses such as: home, court system, religious ceremonies, church, multimedia, school, governance activities and other, as appropriate to applicant); (8) source of data; (formal and/or informal); and (9) rate of language loss or gain. The application has clearly delineated the current status of the Native American language(s) to be addressed by the project.

(b) The application fully describes existing community language or language training programs and projects, if any, in support of the Native American language to be addressed by the proposed project. Existing programs and projects may be formal (e.g., work performed by a linguist, and/or a language survey conducted by community members) or informal (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members). The description should address the following: (1) Has applicant had a community language or language training program within the last thirty-six (36) months? (2) Has applicant had a community language or language training program within the last ten (10) years? Applicants that answer "no" to either question (1) or (2) should provide a detailed explanation of what barriers or circumstances prevented the establishment or implementation of a community language program. Applicants that answer "yes" to either questions (1) or (2) should describe recent language program, including: (1) program goal(s); (2) number of program participants; (3) number of speakers; (4) age range of participants (e.g., 0–5; 6–10; 11–18;, etc.); (5) number of language teachers; (6) criteria used to acknowledge competency of language teachers; (7) resources available to applicant (e.g., valid grammars, dictionaries, and/or orthographics. If there are other suitable resources, please describe); and (8) other outcomes.

(2) *Long-range goals and available resources.* (25 points). (a) The application explains how specific Native American(s) long range community goals relate to the project. Goals are described within the context of the applicant's current language status. The strategies described will assist in assuring the survival and continued vitality of the Native American language(s) addressed.

(b) The application explains how the community and existing tribal government (where one exists) intends to achieve these goals. It clearly documents the involvement and support of the community members in the planning process and implementation of the proposed project as appropriate (e.g., tribal resolutions, minutes of Community meetings, etc.).

(c) Available resources (other than ANA and the non-Federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is *not* considered a binding commitment of outside resources.

If the applicant proposes to enter into a partnership arrangement with a school, college, or university, documentation of this commitment must be included in the application.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

(3) *Project objectives, approach and activities.* (25 points). The application proposes specific project objective work plans with activities related to the goal to ensure the survival and continuing vitality of the Native American language(s). The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Clearly indicate Tribal Government, as appropriate, and the community's active involvement demonstrating continuing participation of Native American speakers;
- Are measurable and/or quantifiable in terms of results and outcomes;
- Clearly relate to the community's long-range language goals which the project addresses;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective will be accomplished;
- Specify who will conduct the activities under each objective; and
- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Evaluation plan.* (15 points). The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the applicant meet its goal to ensure the survival and continuing vitality of the Native American language(s) addressed. A detailed evaluation plan is provided to measure project outcomes, including, but not limited to, a demonstration of effective language growth (e.g., increase of "language use").

(5) *Replication plan and product preservation plan.* (10 points). (a) Identify opportunities for the replication of the project or the modification of the project for use by other Native Americans, if appropriate. If replication is not appropriate, applicant must provide reasons why replication is inappropriate.

(b) Describe the plan for the preservation of the products of the Native American languages project for the benefit of future generations of Native Americans and other interested persons.

(6) *Organizational capabilities/ qualifications and budget.* (15 points). (a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate

specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions clearly describe the position and its duties and clearly relate to the personnel staffing required for implementation of the project activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(c) There is detailed budget provided for each budget period requested which is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement.) Sufficient cost and other necessary details are included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

G. Application Due Date

The closing date for submission of applications under this competitive area is March 17, 1995.

H. For Further Information Contact

Dr. Gerald Gipp (202) 690–6662 or Ginny Gorman (202) 401–7260, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., S.W., Room 348–F, Washington, D.C. 20201–0001.

PART III—GENERAL APPLICATION INFORMATION AND GUIDANCE

A. Definitions

Funding areas in this program announcement are based on the following definitions:

- A *multi-purpose community-based Native American organization* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.
- A *multi-year project* is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- *Core administration* is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.
- *Environmental regulatory enhancement* encompasses (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.
- *Language preservation* is the maintenance of a language so that it will not decline to non-use. "Language vitality" is the active use of a language in a wide range of domains of human life.
- *Language replication* is defined as the application of a language program model developed in one community to other linguistically similar communities.
- Language survival is defined as the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

B. General Considerations

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

C. Activities That Cannot Be Funded By ANA

The Administration for Native Americans does not fund projects that operate indefinitely or require ANA funding on a recurring basis. The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section H, General Guidance to Applicants, below.

D. Multi-Year Projects

Applicants may apply for projects of up to three years. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an

opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

E. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

F. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201–0001, Attention: 93612–951, Telephone: (202) 401–7260.

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, may be mailed by the specific closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447, Attention: William J. McCarron, ANA No. 93612–951.

Hand delivered applications are accepted during the normal working hours or 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Each tribe, Native American organization, or other eligible applicant may compete and receive a grant award in each of the three competitive areas under this announcement. The Administration for Native Americans will accept only one application per competitive area from any one applicant. Alaska Native entities may submit a SEDS application under either competitive area 1 or 2, but not under both.

If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

3. Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with (1) American Indian Tribes and Native American communities and organizations, (2) environmental issues, and (3) Native American languages, as appropriate, evaluates each application using the published criteria in each funding competitive area. As a result of the review, a numerical score will be assigned to each application.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

G. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

3. Determination of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. Section 810(b) of

the Native American Programs Act, as amended, 42 U.S.C. 2991h, specifies the appeals process when ANA determines that an organization or activities are ineligible for assistance. When an applicant or the activities proposed by the applicant are rejected as ineligible, the applicant will be advised of the appropriate appeal process.

H. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservations groups are encouraged to include a description of what constitutes their specific "community." In addition, applicants should document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project.
- Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.
- The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.
- Supporting documentation, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.
- In the ANA Project Narrative, Section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.
- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the approach for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.

2. Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- In Competitive Area 1 there is no maximum or minimum amount of Federal funds that may be requested.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.
- Applicants are strongly encouraged to submit proposals addressing environmental regulatory enhancement and Native American languages preservation and enhancement under the issue-specific competitive areas described in this announcement.
- For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of federally recognized Indian Tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils).
- The Administration for Native Americans will accept only one application, per competitive area, from any one applicant. If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation. In this case, the applicant must include a tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.
- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.
- Two copies of the application plus the original are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a

monthly staff guide for project responsibilities if the applicant is funded.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)

• Applicants may propose a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

• The Administration for Native Americans will critically evaluate applications in which the acquisition of major capital equipment (i.e., oil rigs, agricultural equipment, etc.) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

3. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3, and Native American languages projects submitted under Competitive Area 4.

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding "wish lists" of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

• Project goals which are not responsive to one or more of the funding competitive areas.

• Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

• The purchase of real estate (see 45 CFR 1336.50 (e)) or construction (see ACF Grants Administration Manual Ch. 3, Section E).

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

I. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

J. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section F, The Application Process: Application Submission. The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

1. Deadlines

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

• Received on or before the deadline date at the address specified in Section F2, Application Submission; or

• Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Children and Families shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines

The Administration for Children and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs).

Dated: July 12, 1994.

Dominic Mastrapasqua,

(Acting) Commissioner, Administration for Native Americans.

[FR Doc. 94–17668 Filed 7–20–94; 8:45 am]

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Thursday
July 21, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 3500

Real Estate Settlement Procedures Act; Amendments to Regulation X; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–94–1725; FR–3638–P–01]

RIN 2502–AG26

Amendments to Regulation X, the Real Estate Settlement Procedures Act Regulation (1994 Revisions)

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

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development is proposing to revise Regulation X, the regulation implementing the Real Estate Settlement Procedures Act (RESPA), as amended to extend its coverage to subordinate liens and for other purposes and to make technical corrections. This proposed rule addresses referral payments, computer loan origination services, and controlled business disclosure requirements, and is intended to protect consumer interests while recognizing the potential benefits of technological and business arrangement innovations relating to these areas.

DATES: Comment due date: September 19, 1994.

During this comment period owners and operators of computerized loan origination systems (CLOs) are also invited to participate in a Technology Demonstration of Computerized Loan Origination Systems, to be sponsored by the Department and held in Washington, DC, on September 26, 1994, beginning at 9:30 a.m. (EST), as discussed more fully in the preamble under **SUPPLEMENTARY INFORMATION**. (Requests for participation must be received on or before August 11, 1994, as provided under the **ADDRESSES** section.)

ADDRESSES: Interested persons are invited to submit written comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m weekdays at the above address.

To participate in the Technology Demonstration, contact David Williamson, Director, RESPA Enforcement, at (202) 708–4560, *or* in writing at room 5241, Department of Housing and Urban Development, 7th and D, SW., Washington, DC 20410, *or* on E–Mail through Internet at drwilliamson@hud.gov, on or before August 11, 1994. The TDD number for persons who are hearing- or speech-impaired is (202) 708–4594. (The telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: William Reid, Senior Economist, Office of Policy Development and Research, room 8212, telephone (202) 708–0421. The TDD number for persons who are hearing- or speech-impaired is (202) 708–0770. For legal questions, Grant E. Mitchell, Senior Attorney for RESPA, room 10252, telephone (202) 708–1552; or Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, room 10252, telephone (202) 708–3137. The address for all the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (The telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act Statement

The information collection requirements regarding controlled business disclosures and the CLO disclosures (appendices D and E of this rule) have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0265.

I. Technology Demonstration

The purpose of the Technology Demonstration (see additional information under the headings **DATES** and **ADDRESSES**, above) is to provide owners and operators of computer loan origination systems (CLOs) with an opportunity to demonstrate or discuss the operation and benefits of their systems and the impact of the proposed rule on their systems, and to provide consumer groups, industry organizations, and members of the public with an opportunity to witness such presentations or demonstrations.

As discussed more fully below, this rule proposes to modify the application of the current Regulation X to CLOs. Information gained by the Department from the Technology Demonstration may be used in developing a final rule. Owners and operators are invited to notify the Department of their interest in participating in this Technology Demonstration. Participants will be free to make visual or conceptual presentations without including actual use of computer loan origination systems. Based upon the number of interested parties and other practical considerations, the Department will determine the format, timing, and logistical arrangements for the Technology Demonstration. To the extent feasible, the Department will provide electrical and telephonic hook-ups for participants. The Department reserves the option of limiting the length of presentations, or setting any other guidelines for participation, in accordance with the number of participants.

II. Background

On November 2, 1992, HUD published a revised Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) (RESPA) rule (hereinafter "final rule" or "1992 final rule"), which became effective on December 2, 1992, and was amended on February 10, 1994 (59 FR 6505). Technical corrections were published on March 30, 1994 (59 FR 14748). The final rule contained long-awaited provisions implementing amendments to RESPA regarding controlled businesses. These amendments were originally enacted in 1983 as section 461 of the Housing and Urban-Rural Recovery Act (HURRA), Pub. L. 98–181. The final rule also updated the original RESPA rule, which had not been amended since 1976.

On October 28, 1992, a few days before publication of the final rule in the **Federal Register**, then-President Bush signed the Housing and Community Development Act of 1992 (Pub. L. 202–550) (1992 Act), which amended RESPA to state specifically that the making of a mortgage loan was a covered transaction (a Federal court case had created uncertainty) and that refinancing transactions were transactions covered by RESPA. The 1992 Act also extended RESPA's coverage to all subordinate liens involving 1- to 4-family residential property. Implementing provisions, along with revisions of the final rule, are set forth in the **Federal Register** of February 10, 1994, and are effective on August 9, 1994. The effect of the statutory and regulatory changes was to expand substantially the coverage of this criminal and civil statute.

Following issuance of the final rule, two lawsuits were filed: one by the Mortgage Bankers Association and one by a group of independent service providers, called CRISIS. Both suits objected to provisions of the final rule

and alleged that HUD had not complied with the Administrative Procedure Act (5 U.S.C. 551 et seq.) in promulgating the November 2, 1992, rule. The cases have been dismissed, but are subject to being reinstituted at any time.

Upon assuming office, HUD officials in the new Administration were inundated with comments—mostly complaints—about the final rule issued in the last days of the previous Administration. Notably absent from the interests contacting HUD about the final rule were any representatives of consumer interests. Instead, comments came almost entirely from the affected industries. Some industry representatives argued that the provisions of the final rule benefited consumers, while others argued that the provisions, sometimes the same provisions, were harmful to consumers.

The Department also received allegations that the final rule created uncertainty about whether referral fees were in fact prohibited by RESPA. Specifically, some commenters claimed that the introduction in the final rule of an employer-employee exemption from the prohibition on referral fees prompted some persons to set up sham employer-employee relationships to shield prohibited referral fees, and prompted others to "extort" referral fees from other settlement service providers on the premise that HUD now allowed such compensation. The final rule did not authorize such practices; however, some commenters argued that the existence of confusion about whether it did suggested that the final rule failed to establish a bright line, comprehensible to industry participants, between permissible and impermissible activities.

Given the controversy over the final rule, the Secretary determined that a review of the previous policies was needed, particularly focusing on the final rule's impact on consumers. The Secretary also articulated three principles to guide that review:

(1) HUD's responsibility is to protect the consumer—not to mediate among industry interests.

(2) HUD should regulate multibillion dollar industries responsibly—principally by acting quickly to end uncertainty.

(3) Technological and business arrangement innovations have the potential to provide significant consumer benefits, and HUD does not serve consumers well if its regulations unduly stifle such advancements.

On July 6, 1993, in an effort to ensure that the new Administration heard the views of all interested parties, the Department published a "notice of written comment period and informal public hearing" (58 FR 38176), inviting testimony and written comments on the impact on consumers of the following four provisions of the final rule:

Issue 1

Section 3500.14(g)(2)(ii), which provides that RESPA Section 8 does not prohibit "an employer's payment to its own employees for any referral activities * * *." (Hereafter, this issue is referred to as the "employer-employee exemption" or "Issue 1".)

Issue 2

Section 3500.14(g)(2)(iii), which provides that Section 8 of RESPA does not prohibit "any payment by a borrower for computer loan origination services, as long as the disclosure set forth in Appendix E of [the final rule] is provided the borrower." (Hereafter, this issue is referred to as the "computer loan origination (CLO) exemption" or "Issue 2".)

Issue 3

Section 3500.13(b)(2), which provides that "in determining whether provisions of State law or regulations concerning controlled business arrangements are inconsistent with RESPA or this part, the Secretary may not construe those provisions that impose more stringent limitations on controlled business arrangements as inconsistent with RESPA, as long as they give more protection to consumers and/or competition." (Hereafter, this issue is referred to as "preemption policy" or "Issue 3".)

Issue 4

Section 3500.15(b)(1), which provides for a "written disclosure in controlled business situations, in the format of the Controlled Business Arrangement Disclosure Statement set forth in appendix D of this part" of certain information regarding the ownership and financial relationships between referring and referred-to parties, and for certain timing and other methods for disclosure. (Hereafter, this issue is referred to as "controlled business disclosure policy" or "Issue 4".)

At a public hearing held on August 6, 1993, at the General Services Administration (GSA) Auditorium in Washington, DC, all 36 parties who had requested to testify did so. Twenty-two witnesses opposed provisions of the rule and 14 witnesses supported provisions of the rule. The Department also received 1,553 written comments.[1] Of the 1,526 comments reviewed, 1,148 comments opposing provisions of the final rule were received from mortgage lenders, or State or regional organizations representing mortgage lending professionals; consumer organizations; 3 Federal agencies; and, in both combined comments and separately, several State Attorneys General. An additional 325 critical comments were received from law firms and title insurance companies. Twenty-four comments were wholly or generally supportive of the final rule, including comments from individuals and organizations in real estate-related industries, lenders or title insurance providers, real estate brokers, a builder, and the Federal Reserve Board. The remainder of the comments were not characterized.

III. The Secretary's Position: A Brief Summary

Based on a complete review of the substantive arguments in support of and in opposition to the final rule provided in the testimony at the August 6, 1993, hearing; the written comments received; and a review of the RESPA statute, its purpose, and its history, the Department reached certain conclusions about its policy objectives on Issues 1–4, set forth above. The Department therefore proposes to amend the final rule as described below. Recognizing the rapid evolution of technology and business practices, the Department believes that development of the final rule will require additional collateral information about how certain details of this proposal will work in practice and whether these details will further the Department's policy objectives. Therefore, the Department has developed a series of questions about specific aspects of the proposal and asks commenters to offer any information they may have about how the rules would work. These questions are detailed throughout this preamble.

The following are the Department's policy objectives in addressing each issue and the Department's conclusions as set forth in the proposed rule:

A. Issue 1: The Employer-Employee Exemption

(1) *HUD's objective.* Controlled business arrangements and so-called "one-stop shopping" *may* offer consumers significant benefits including reducing time, complexity, and costs associated with settlements. If they do, the market should produce incentives for the creation of controlled business

[1] A total of 1,553 comments were officially logged in by the Department's Rules Docket Clerk. More than two dozen were duplicates, leaving 1,526 unduplicated comments.

arrangements without HUD authorizing incentive payments (otherwise impermissible under RESPA) to encourage these arrangements. However, HUD cannot scrutinize every aspect of the financial relationship between interrelated companies. Therefore, HUD's objective is primarily to prohibit compensation for business development for related entities at a point when that compensation has the greatest potential for overwhelming the other considerations that go into business referrals, *e.g.*, long-term customer satisfaction.

(2) *HUD Proposal.* (a) The exemption under the final rule permitting employers to pay their own employees referral fees is proposed to be withdrawn. Under this proposal, no employee of a company may be paid referral fees, even for referrals to an affiliate company. This proposal is based on the Department's view that the exemption under the final rule was too expansive and compromised the statute's purpose of protecting the consumer from being referred for settlement services based on financial gain to the referrer, rather than on the highest quality and best price of the services.

(b) In the interest of avoiding undue interference with the internal operations of controlled businesses, which Congress has concluded are permitted business arrangements under RESPA, the proposed rule would allow the payment of bonuses and compensation to managerial employees in controlled businesses for such purposes as the generation of business among affiliates; provided, however, that the compensation: (i) Is not tied on a one-to-one basis or calculated as a multiple of the number or value of any referrals; and (ii) these employees do not routinely deal with the public.

B. Issue 2. Computerized Loan Origination Systems

(1) *HUD's Objective.* The comments and witnesses at the public hearing demonstrated that there is some confusion concerning the scope of the Department's authority under RESPA to regulate CLOs. Thus, the Department's first objective in this area is to clarify what the RESPA rules can and cannot do. (See section below describing the legal framework for analysis of payments for CLO services.) In addition, the Secretary wishes to encourage the exploration and use of new technology, especially when the new technology may provide information and services to better inform consumers about one of the largest and most complex financial transactions in their lives, thus allowing the consumers to be more effective shoppers. However, the use of that technology does not justify increasing the cost of mortgage loan originations when the technology does not provide meaningful information otherwise available without charge, or when there is no additional convenience, clarity, or other benefit.

(2) *HUD Proposal.* The final rule would be amended to define a CLO and to provide that payments made by borrowers to CLO operators for use of a *qualified* CLO are exempt from RESPA scrutiny. The definition would set forth reasonable requirements for qualified CLO systems for access, lender-neutrality, and disclosure to consumers. Systems that fall outside the exemption would have to meet the basic test of Section 8 of RESPA that the borrower's payments be for goods or facilities actually furnished or for services actually performed.

C. Issue 3: Preemption

There are no proposed changes to the preemption provisions. The Secretary has concluded that change to these provisions is not warranted at this time.

D. Issue 4: Controlled Business Disclosure Form

The rule would be amended to add an acknowledgement provision on the controlled business disclosure form and to make other small revisions.

IV. Discussion of Comments

A. Commenters Opposing the 1992 Revised RESPA Rule

The following summarizes the nature of the commenters and comments opposing and supporting provisions on which HUD invited comment in its July 6, 1993, notice (58 FR 38176), as well as the positions taken in this proposed rule. In general, commenters were responsive to the notice's invitation and focused their remarks on the four identified provisions of the rule. A few comments raised other issues concerning the final rule, but the focus of the hearing and request for comments was the four specific areas listed. This proposed rule deals only with the four issues on which comment was invited.

Eleven hundred forty-eight commenters opposed provisions of the final rule. Commenters included mortgage lenders, realtors, and State or regional organizations representing mortgage lending professionals. The Department received an additional 325 comments critical of the rule from law firms and title insurance providers. Opposition was also expressed by six national organizations representing elements of the mortgage finance or title insurance industries, two national consumer organizations, an economist, a legal aid society, a real estate consultant, a law student, and four commenters whose professional interest could not be ascertained. A few national or regional computer service providers also commented on the rule.

Finally, 3 Federal agencies—the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision—submitted comments on the final rule, and 4 opposition comments were received from State Attorneys General, including 1 comment representing the unified position of the Attorneys General of 16 States.

B. Commenters in Support of the Revised RESPA Rule

Comments wholly or generally supportive of the final rule were received from 24 individuals and organizations engaged in real estate-related industries, including 15 lenders or title insurance providers; 6 real estate brokers or agents; an organization composed of controlled businesses, including realtors, which was formed in part to support the final rule (RESPRO); a builder; and the Federal Reserve.[2]

C. Summary of the Comments

In the ensuing discussion, arguments presented by the commenters related to these four issues will be summarized under the four issue headings. When commenters have asserted related arguments affecting the disposition of two or more of these issues, those comments will be mentioned in the course of discussing the issue that HUD perceives to be the core argument made by the particular commenter.

(1) Issue 1: The Employer-Employee Exception

The employer-employee exception provision in § 3500.14(g)(2)(ii) of the final rule—allowing "an employer's payment to its own employees for any referral activities * * *"—was the subject of more adverse comment than any other issue raised by the July 6, 1993, notice.

Hundreds of lenders, attorneys, and settlement agents objected to the rule's provision permitting employer payments to employees for "referral

[2] Support for portions of the final rule was also expressed in scattered comments received from individuals and businesses writing to criticize other specific features. The only issue receiving an appreciable amount of positive comment from critics of the rule's other features was Issue number 4 of the July 6 notice—the controlled business disclosure form.

activities". Objections were focused, in large part, on what commenters perceived as the anticompetitive effect of permitting referral-based payments. Additionally, the Mortgage Bankers Association, sixteen State attorneys general, and a large number of other institutional and individual commenters saw the referral payment provision as being directly contrary to the RESPA statute, or, at a minimum, as contravening statutory intent.

The supporting commenters cited the desirability of vertical integration and the difficulty in enforcing employer-employee arrangements when the employer controlled all of the relevant documentation.

(a) *"Anticompetitive" Arguments Against Referral Payments.* The central argument raised by numerous commenters, including the combined comments of attorneys general of several States, was that referral payments were a breach of the trust of prospective home purchasers, particularly in transactions involving real estate agents and affiliated companies:

> Consumers expect to be treated fairly by their real estate agents and therefore trust that a referral to a settlement service provider is based solely on their agent's knowledge of comparative prices and service features. When there was no financial incentive for the [real estate agent], consumers were justified in thinking that they were referred to a settlement service provider because that provider offered good service at a reasonable price, not because the agent received a payment in exchange for the referral. This is no longer the case.

Comments of State Attorneys General

Referral payments, commenters repeatedly pointed out, permit vertically integrated real estate companies to provide financial incentives to their employees to make all settlement service referrals to affiliated companies. As a result, settlement service providers tied to a real estate company are "insulated from competition on prices and services."

RESPA was adopted, one commenter observed, because of Congress' recognition that the very nature of the real estate transaction is arcane and cumbersome, and that the typical consumer lacks any comparable economic experiences. The Consumers Federation of America (CFA) noted that the consumer has traditionally relied for assistance on the real estate broker (who ordinarily is an agent of the seller)—a person in "a highly privileged position of influence over the consumer * * *." CFA concluded that RESPA evidences congressional recognition that this influence can be easily abused for broker self-gain at the material expense of consumers.

The Mortgage Bankers Association (MBA) and other commenters remarked that in the absence of referral fees, real estate agents may be expected to afford good advice to home buyers. The real estate agent has an incentive (the prospect of a sales commission, as well as potential business referrals and repeat business) to send a buyer to a lender offering the best combination of service and price. However, when the person making the referral has another motive—a direct financial interest—it becomes less clear that the agent or broker's referral will be made with the best interests of the home buyer uppermost, the MBA asserted.

According to its opponents, the principal consequences of the employer-employee exemption were:

(i) Failure to refer home buyers to lenders and other settlement service providers that provide the best service and prices; and

(ii) Ultimate reduction or elimination of competition in the industry, brought about by "unfair competition" driving out small, independent settlement service providers.

CFA echoed the arguments of lenders, attorneys, and title insurance providers who repeatedly asserted that home buyers lacked the experience to be sophisticated consumers:

> For better or worse, consumers are simply not effective financial services shoppers * * *. Since there is no possibility of one-stop shopping because the consumer is not shopping, the core claim of consumer benefit offered by controlled business arrangement advocates—consumer choice—crumbles under the weight of economic reality * * *.
>
> Although shopping may not be occurring, there is, nonetheless, the profound opportunity for 'reverse competition' created by a captive market willing to pay higher-than-market prices. What this rule champions is not one-stop shopping, but, rather, one-stop pick-pocketing of the consumer through the multi-layers of a diversified financial services holding company.[3]

Commenters opposed to referral payments were not persuaded by arguments in the 1992 final rule in support of permitting employer-employee referrals. "What matters," one commenter said, "is not that the payment is going from employer to employee * * * [but] that there is payment for a raw referral, creating the very anti-competitive and anti-consumer financial incentive Section 8 [of RESPA] was intended to eliminate."

(b) *Legal Arguments Against Referral Payments.* Many of the same commenters who opposed referral payments on policy or economic grounds also argued that permitting employer-employee payments for referrals directly violated the RESPA statute. CFA, after characterizing the events that led to the Congress' 1983 controlled business arrangement amendments to RESPA, asserted that the Congress' clear intent was to permit controlled business arrangements "only under certain specific conditions." The final rule, CFA claimed, "grossly exceeds any reasonable interpretation of statutory authority, and * * * has returned the settlement service marketplace—or at least the controlled business arrangement market—to the pre-RESPA era of anti-consumer and anti-competitive brokerage steering."

MBA and other commenters observed that Section 8(c)(4)(C) of RESPA states that controlled business arrangements are permissible as long as "the *only thing of value* that is received from the arrangement, other than payments permitted under this subsection, is a return on the ownership interest or franchise relationship." MBA argued that because the final rule permits employees to receive a "bonus" when they refer settlement business to affiliates, the rule "fails to give effect to the plain language of the statute."

(c) *Arguments in Support of the Employer-Employee Exception.* Several institutional commenters, along with real estate brokers, lenders, insurance companies, and vertically integrated real estate service providers, expressed support for the employer-employee exception provided for in § 3500.14(g)(2)(ii) of the final rule.

The Director of the Consumer and Community Affairs Division of the Federal Reserve System supported the rule's exemption for employer payments to its own employees for referral services, saying that it is a "legitimate expectation" that an employee would make referrals for the employer and be compensated for the referrals. Prohibiting payment for referrals, the Federal Reserve spokesperson said, would prove difficult from an enforcement standpoint, since examiners would then be required to review employer bonus and salary policies to determine whether compensation was based on general performance, or whether it included payments for referrals.

The Federal Reserve spokesperson also expressed a concern related to the Community Reinvestment Act of 1977

[3] CFA cited and characterized a report commissioned by HUD from Peat Marwick in 1980 as finding that two-thirds of home buyers included in that sample did no "shopping" at all for a lender, and that more than 80 percent failed to "shop" for settlement services.

(12 U.S.C. 2901 et seq.) and to the Federal Reserve's efforts to encourage banks to refer business to community-based lenders:

> * * * A bank may support these efforts by rewarding employees for referring potential applicants who have not previously considered the [Community Reinvestment target] bank an accessible community lender. An adverse interpretation by HUD of this provision could be detrimental to future innovations and developments in community lending.

The Real Estate Services Providers Council (RESPRO) pointed out that the November 2, 1992, rule makes clear that employer payments to employees cannot be reimbursed by the party receiving the referral, or that employer payments cannot be made to nonemployees.

The Consumer Bankers Association (CBA), although generally supportive of the final rule, urged HUD to go further by expanding the exemption to the referral fee prohibition to allow payment for referrals to employees of *affiliated* businesses. In the absence of such an expansion, CBA argued, the structure of the institution could determine whether an employee could receive a payment for referrals. CBA urged that the difference in the legal treatment of a referral payment based on the internal structure of a banking organization lacks any policy justification.

Other commenters asked for expansion of the employer payments principle to allow entities with common ownership to pay referral fees to affiliated companies.

(d) *The Proposed Rule's Position on the Employer-Employee Exception.* The Department reviewed the extensive history relating to this issue, including the history of the controlled business arrangements amendment to RESPA. In enacting Section 8 of RESPA in 1974, Congress prohibited all fees, kickbacks, or things of value for the referral of settlement service business. The statute, as originally enacted, did not address referrals of business to affiliated companies.

In 1980, the case of *Coldwell Banker* v. *Department of Insurance* (102 Cal.App.3d 381 (2d. Dist. 1980)) reached the courts. In that case the California Insurance Commissioner refused to grant a license to a wholly owned subsidiary of a real estate company to act as a title insurer. The denial was based on a concept of restriction of trade. This case drew HUD and congressional attention to whether this or similar controlled business arrangements might violate Federal law. On July 24, 1980, HUD issued an Interpretive Rule (subsequently withdrawn) that stated that "controlled business arrangements may be a violation of Section 8." (49 FR 49360; withdrawn on May 18, 1982, 47 FR 21304.). Two days of congressional hearings were held on September 15 and 16, 1981, and, in 1983, Congress enacted the "controlled business arrangement" amendment to RESPA.

The 1983 controlled business arrangement amendment represented a compromise between those who wanted no restrictions on the ability of real estate settlement service professionals to refer settlement service business to entities with which they had an ownership interest and those who wanted a blanket prohibition against such referrals. The compromise (see H.R. Report 97–532, at page 52) made clear that controlled business arrangements do not violate RESPA—allowing affiliated entities, such as real estate professionals, to refer settlement business to related entities—provided that specified disclosure requirements and safeguards are satisfied, including: (1) A requirement that the relationship between the provider of settlement services and the person making the referral be disclosed, along with the estimated charges of the provider; (2) a bar against the required use of a particular provider, except under certain specified exceptions under Section 8; and (3) a bar against anything of value being received by the referring party, beyond a return on ownership interest or franchise relationship or payments otherwise permissible under Section 8(c) of RESPA.

Between the enactment of the 1983 amendments to RESPA and the issuance of the 1992 final rule, HUD had issued several informal legal opinions concerning the extent to which employers could pay referral fees to employees. The opinions made clear that bona fide full-time employees could be compensated for generating business for their own employers, as this would be within the scope of their employment. These opinions also made clear that uncompensated referrals to affiliated companies were not prohibited. These opinions did *not*, however, broadly approve compensation to all employees for referrals to affiliated companies. In the circumstances addressed by HUD informal opinions prior to the final rule, the permissibility of compensation of employees for referral related activities depended upon the structure of the affiliated companies or on whether the employees were acting within the scope of their employment.

The 1992 final rule went beyond any of these previous positions and created an exemption for any and all employer payments to its own employees for referrals of business, including referrals to affiliated companies. The final rule only retained the stricture that the company receiving the settlement business could not directly or indirectly compensate anyone for such business. Although the rule did not limit this exemption to controlled businesses, the exemption has little utility for entities other than affiliated companies, since it is unlikely that an employer would pay its own employees for making referrals to unrelated individuals or companies. The preamble of the final rule set forth the position that payments from an employer for referrals were exempt from Section 8 because a business entity acts through its employees; the action of the employees is not sufficiently distinct from the action of the employer to provide the requisite plurality of actors needed to violate Section 8. Although the rule permitted an employer to compensate its own employees for referrals, it indicated that if the company receiving the referral reimbursed the employer or the referring employees, Section 8 of RESPA would be violated.

Entities critical of the 1992 final rule have characterized the provision permitting employers' payments to their own employees for referrals as broadly sanctioning referral payments. Trade and business press have frequently restated this position without examination. Also, the Department's attention has been drawn to a number of advertisements and mailings in which various companies have cited RESPA as authority for bogus or sham programs under which fees may be paid to individuals who will become "employees." While the final rule did not permit sham arrangements, neither did it adequately clarify the extent of the exemption.

Following a full consideration of the testimony and comments, the Secretary has concluded that the 1992 final rule's employer-employee exemption was too broad. Accordingly, the Secretary proposes to amend the final rule by withdrawing the exemption set forth in § 3500.14(g)(2)(ii) of that rule. This amendment will have the effect of providing that, while an employer may compensate its own bona fide employees for the generation of its own business, all compensation for referrals to outside entities, including affiliates, will be prohibited under RESPA.

In addition to withdrawing the exemption, the proposal clarifies specifically when compensation to

employees runs afoul of the requirements of RESPA. The rule provides that:

(i) No employee or agent may receive compensation from his or her employer or any other source when the compensation is tied on a one-to-one basis to, or is calculated as a multiple of the number or value of, referrals of business to an affiliated entity; and

(ii) The compensation of agents or employees who routinely are in direct contact with the consumer may not be based in whole or in part on the value or number of referrals made to affiliated entities.

These two clarifications are designed to minimize any incentive that a person in a position to make or influence a referral might have to make a referral based on his or her own financial interests. Clearly, compensation calculated as a multiple of the number or value of referrals creates a powerful incentive to make referrals that maximize one's own compensation. Similarly, agents or employees who ordinarily are in direct contact with the consumer may be influenced in making referrals if their overall performance is measured and compensation is set, even in part, based on the number or value of referrals to affiliated entities. The proposal makes clear that RESPA prohibits such compensation. By withdrawing the broad exemption, the potential for conflict of interest by those persons making referrals is reduced, increasing the possibility of true competition among settlement service providers based on the cost and quality of the services provided.

Most facets of the settlement services business are very competitive, and the Secretary wants to assure that the rule does nothing to harm this competitiveness. The provisions set forth above that would clarify how RESPA affects employee compensation can be enforced and will not require HUD to interfere unduly with the internal operations of controlled business arrangements. Because Congress has clearly ruled on the acceptability, with conditions, of controlled business arrangements, the role of the Department is not to encourage or discourage controlled business arrangements, but to clarify what activities between interrelated companies are permissible or not permissible under RESPA.

With the withdrawal of the exemption, employees of controlled business arrangements could continue to send consumers to affiliated companies, but they may be more likely to exercise independent judgment reflecting the interests of the consumer if the inducement of referral-specific compensation is not present.

The proposal to withdraw the exemption would obviate the need for a full examination of the question raised by some commenters about whether the exemption in the proposed rule is contrary to the statute, particularly since the Department has decided not to withdraw the employer-employee exemption without notice-and-comment rulemaking. In any event, the Department believes the exemption in the final rule would be legally sustainable, because of the broad exemption authority of the Secretary under Section 19 of RESPA.

Pending this proposed rule becoming final, the existing employer-employee exemption remains operational and employer payments made in accordance with the existing RESPA regulation will *not* be treated by the Department as conduct violative of the RESPA statute. However, the exemption in the existing rule is only available for employees, not independent contractors, a class that, under the Internal Revenue Code, includes most real estate agents and many others in the settlement services business. Those persons engaging in sham practices in an attempt to avoid the strictures of RESPA are not protected under the 1992 final rule during the pendency of these revisions.

(e) *Questions and comments on this proposal.* The Secretary's proposal on the employer-employee issue seeks to clarify RESPA's consumer protections while avoiding unnecessary intrusion into controlled businesses. The Secretary intends to be flexible in finalizing this proposal in pursuit of these objectives. To assist in this rulemaking, the Secretary is particularly interested in comments containing responses to the following questions:

(i) To what extent do you believe the Secretary's proposal will accomplish the objectives of eliminating compensated referrals and other payments that pose the greatest dangers to consumers without overwhelming other legitimate considerations for referrals, such as long-term customer satisfaction?

(ii) What effect will the proposal have on the ability of firms to provide high-quality and well-priced services to consumers?

(iii) To what extent do you believe the proposal will unduly interfere with the operations of controlled businesses?

(iv) What would be the effect of any such interference (with the operations of controlled businesses) on consumers?

(v) To what extent do you believe this proposal will interfere with legitimate business development programs of affiliated companies?

(vi) To what extent do you believe that the proposal will result in increased competition in the settlement services industry?

(vii) If you disagree with the approach embodied in the proposal, what alternative approaches would increase competition?

(viii) Do you believe that the proposal will adequately protect consumers from steering?

(ix) If you do not believe the proposals will provide adequate protection from steering, what alternatives would provide such protection?

(x) To what extent do you believe the proposal will lead to cost savings through increased efficiencies in the settlement services industry?

(xi) If you disagree that the proposal will lead to cost savings, what alternatives would you suggest to facilitate efficiencies?

In promulgating a final rule, the Secretary invites, and will consider, economic and other data submitted on the effect on the settlement services industry and consumers of the Secretary's and other proposals.

(2) Issue 2: Computer Loan Origination Services ("CLOs")

(a) *Comments Critical of the CLO Provision.* The final rule's revision of the RESPA regulations indicated that payment by a borrower for computer loan origination services was *not* 'prohibited by RESPA or Regulation X. This provision also drew hundreds of adverse comments, as well as support from several commenters responding to the Department's July 6, 1993, notice.

Many commenters treated the CLO issue and the issue of referral payments as closely related concerns. Computer loan origination services, these commenters claimed, often are nothing more than thinly disguised arrangements for the referral of settlement services. The commenters argued that both referral payments and superficial or nominal CLO services involve the "steering" of homebuyers to a limited choice of service providers. A number of these commenters indicated their belief that simple disclosure of the fact that a fee is being charged affords inadequate protection against these dangers.

The Consumer Federation of America (CFA) entered vigorous objections to the borrower fee authorized by the final rule. "If there is economic value to the adoption of electronic loan origination technology, CFA believes that the marketplace will, on its own, adopt it. There is no reason why the consumer should foot the bill for the industry's

capital investment." The CFA asserted that the RESPA statute was "suspicious" of fees for services of unknown or questionable value, and it objected to any "sanctioned levy against consumers for CLO services."

Several commenters expressed their confusion concerning a CLO-related question posed to the public in the July 6, 1993, notice. The question presented was whether further clarifications or additional conditions regarding CLOs are needed or would be desirable to protect consumers, *particularly if any payment for the CLO service comes directly or indirectly from a lender.* (Emphasis supplied.)

Some commenters addressing this issue said they had assumed that the final rule only permitted "customer-pay" systems. If lender-pay systems are permissible, these commenters claimed, a major new problem is presented. Lender-pay systems are especially dangerous, the commenters declared, because the broker's financial gain and incentive to steer may be totally hidden.

A significant minority of the commenters (including many who otherwise opposed features of the final rule) believe that CLO services are the wave of the future and that computer-based systems promise real benefit to prospective homebuyers. These commenters, however, joined with other critics of the CLO provision in questioning the legitimacy of linking CLO systems to referral fee arrangements. Others commenters objected to the final rule's failure to assure universal access to CLOs by lenders doing business in a particular location. Hundreds of comments—predominantly from lenders and related settlement service providers—urged that a comprehensive, limiting definition of CLO services be added to the rule.

A commenter representing an automated service provider expressed his fear that CLOs operated by real estate brokers and agents could be used to "display financial information [about other lenders] inferior to what [the broker's affiliate] is offering, and charge the borrower for doing it; then use the CLO fee collected for payment of 'employee compensation' to guide the buyer to the broker-owned title company, closing service, insurance agency, home warranty company, and pest control company. The referral fee will not come from the normal real estate commission, but instead each service generates sufficient income to pay a referral fee to capture the next service, commencing with the CLO fee." The commenter further stated:

> Information provided through technology is not only valuable, but vital given today's complex and sophisticated lending; but, to allow a real estate broker to charge a purchaser for providing this information without having adequate guidelines in place assuring that the consumer will, in fact, receive information that is in the best interest of the consumer * * * is a terrible disservice to the consumer * * *.

Commenters on the CLO issue had an array of suggestions for revising the RESPA regulations to limit, expand, or otherwise control the use of homebuyer- or lender-compensated CLO services, and to add suitable definitions of the term "CLO". Among these suggestions were:

(i) Creating an (unspecified) "market mechanism" to keep CLO fees reasonable and closely related to the true value of the service being performed;

(ii) Requiring the borrower to pay for CLO services *at the time the service is being provided* (a number of commenters believed that such a requirement would help assure that the homebuyer would insist on receipt of a "real" service, "rather than unknowingly subsidize a disguised referral fee that is buried at the end of escrow");

(iii) Mandating that a substantial number of lender participants be included in any CLO system, and defining the term "computer loan origination service" in such a way as to exclude CLO providers that afford the borrower only limited information;

(iv) Requiring CLOs operated by real estate brokers or agents to make special disclosures concerning use of CLO systems, in greater detail than the disclosures set out in Appendix E to 24 CFR part 3500. (A large number of lender-commenters asserted that special disclosure was unnecessary when CLOs are used by lenders, arguing that real estate brokers, "who may be receiving another fee in the transaction," were the only parties for whom CLO-related disclosures should be required.);

(v) Cautioning HUD *not* to permit *lenders* to pay for CLO services (arguing that any payment coming directly or indirectly from a lender should be subject to the anti-kickback provisions of Section 8 of RESPA). While the 1992 final rule addressed only the issue of fees paid by borrowers, commenters also discussed the issue of fees paid by lenders for inclusion on CLO systems, in response to the invitation for such comments in the July 6, 1993, notice. Most commenters referred to such payments as thinly disguised referral fees.

(vi) Requiring disclosure that particular CLO listings provide only partial information about available loans. (A few commenters urged that the CLO fee disclosure form include "bold print" disclosing that the same information could be acquired by the prospective homebuyer "for free" by shopping on their own.);

(vii) Recognizing that CLO services, if performed by a real estate broker or agent for a homebuyer, create a conflict of interest and a "potentiality for fraud" for the broker or agent, whose fiduciary duty is to the *seller*. Unified comments from 16 State Attorneys General asserted that the use of CLOs by real estate agents is analogous to the situation once prevalent in the travel industry:

> * * * where independent travel agents using computer reservation services steered travelers to whichever airline happened to own the computer system used by the travel agent. Those flights were not always the most convenient or cheapest for the consumer. Private antitrust enforcement actions were required to rein in these practices.

The Attorneys General declared that the economic costs of these airline-industry practices are "trivial compared to the costs to consumers if CLOs are used to steer consumers in large numbers to more expensive mortgages than are readily available [elsewhere] in the market."

(viii) Suggesting that (in defining a CLO system) HUD require equal access to the system by any lender requesting access;

(ix) Urging that fees for CLO services be proscribed because access to lender information has, before, been a free service performed by real estate agents or brokers; thus CLO charges would "create a new fee for no real [new] value or service provided;"

(x) Arguing that borrower information achieved through the CLO process was near-worthless, because lenders will have to reverify any information provided before underwriting loan applications; and

(xi) Requiring that the CLO disclosure (and acknowledgement) occur before the borrower agrees to use computer loan origination services.

In addition to these recommendations from multiple commenters, the Mortgage Bankers Association (MBA) recommended specific modifications to § 3500.14(g)(2)(iii):

(one) Prohibiting the receipt of compensation for operating a CLO by any person who already receives compensation for the same transaction in another capacity;

(two) Defining "computer loan origination services" in a manner that would require interactive communication with the computer

systems and the listing of multiple lenders upon request and for no charge; and

(three) If the first two recommendations are not accepted by HUD, requiring that the CLO fee be both disclosed and paid for before the CLO is accessed.

The MBA also urged that the rule set out the principle that the mere performance of "clerical loan origination activities, most or all of which will have to be repeated by the lender" does not constitute a service justifying the collection of a fee.

(b) *Comments Supportive of the CLO Provision.* Comments in support of the CLO provision of the rule were varied. In general, these comments urged retention of the final rule's disclosure-based authorization of CLOs and CLO charges to borrowers. However, supporters of the CLO provision and other commenters on the provision expressed considerable sentiment that substantial clarification of the rule was necessary in this area.

Several commenters observed that the rule was silent on the question of what disclosure (if any) would be required if the *borrower* was not charged a fee for access to a CLO service.

One commenter ventured that, evidently, the rule's silence on the issue would indicate that no disclosure would be required when, for example, the *lender* paid CLO-connected fees. While the commenter approved this result, he added that "further clarification would be welcome." The comment recommended that no separate disclosure be required for lender-pay or for "no charge" CLO services—even where it was clear that no-fee CLO systems were being paid for out of loan origination fees or lump-sum fees that are charged to lenders and mortgage brokers to process and underwrite mortgage loan applications. In these instances, the commenter maintained, the CLO services were less like traditional settlement services and more like services purchased by a settlement service provider to help it perform its normal functions—"back office" loan origination services.

In general remarks, the same commenter argued that overregulation of CLO services would stifle innovation and competitiveness. It was pointed out that one of the major advantages of CLO services was the expansion of housing opportunity "into sectors of the U.S. economy not now adequately served by the mortgage lending industry."

Several commenters suggested that, with the very recent revision of § 3500.14(g)(2)(iii), the Department should not make immediate changes, but should allow the marketplace to develop and experiment with CLOs without additional regulation. However, in a number of instances commenters supportive of the final rule's treatment of CLO services joined opponents in requesting that HUD provide clarifications of the rule that would:

(i) Define the term "computer loan origination services";

(ii) Indicate whether payment for CLO services must come solely from borrowers, or whether lender-paid services are permitted; and

(iii) Advise whether there exists an "implicit limitation" on the fees that can be paid to CLO providers (such as a reasonable relationship to the market value of the services performed).

Other pro-rule commenters joined commenters that had objections to the CLO services provision in supporting an explicit requirement that the CLO fee disclosure statement be given to the borrower *before* the fee is imposed, and that the fee be paid to the CLO operator *before* services are performed. "By requiring upfront disclosure and payment," one commenter observed, "the borrower will be aware that a separate fee is being imposed for services not required by the mortgage lender and will be able to determine whether the services provided by the CLO operator merit such a fee."

On the subordinate issue of the number of lenders included on CLOs, commenters supporting the CLO provision generally differed with opponents, many of whom urged much closer regulation of this aspect. The pro-CLO services commenters generally advocated "leaving to the marketplace" the determination of how many lenders were appropriate for a CLO service. One commenter argued that dictating how many lenders must appear on the CLO system "is another example of well-intentioned regulation which could ultimately hurt consumers." The commenter pointed out that individual lenders may want to develop competing CLO products, each marketing its own software products, with the CLO operator then having access to several single-lender CLOs. The commenter concluded, as did several other supporters of the final rule's CLO services provision, that a consumer provided with full disclosure can determine the services for which the consumer is willing to pay.

A few commenters anticipated adverse comment on the CLO systems issue and urged the Department not to bend to those commenters who would impose limitations on fees for CLO services or would require that fees be collected up-front.

One commenter whose overall position strongly supported the final rule took a position comparable to many anti-CLO commenters in several respects. To protect consumers this commenter supported the imposition of additional conditions relating to CLO systems, such as:

(i) Up-front disclosure of the CLO fee, and payment in advance of the performance of services; and

(ii) A regulatory requirement that real estate brokers be required to perform services "beyond electronically providing a menu of lenders' interest rates and products." The same commenter, however, joined other CLO services proponents in urging that HUD should not attempt to regulate the number of lenders to be included in CLOs.

One commenter, evidently the operator of a large, independent computer loan origination system, made several points from that perspective:

(i) The commenter's independent CLO system avoided "steering" abuses because steering arises when lenders offer commissioned loan officers or mortgage brokers a larger commission on some products than on others, thus encouraging lenders to sell a particular type of loan. The commenter's system required uniform charges across loan products and lenders, which are established by contract among participants and monitored by the CLO service provider;

(ii) The system encourages competitive loan pricing, by including a wide variety of information affecting the overall cost of a loan to a consumer and making it simple for a loan counselor to find the "best deal";

(iii) The system increases competition in rural areas, by expanding the number of lenders offering loans;

(iv) The system helps to avoid racial and other forms of discrimination against borrowers by making the loan-decision process "demonstrably race-blind";

(v) The system avoids the criticism that CLO systems are mere "kickback schemes," because the loan counselors working with the system perform full loan-origination functions.

This commenter recommended that RESPA be revised to stipulate that real estate brokers may not charge for origination services (implicitly, CLO services) unless they actually register a loan commitment with the lender. "This assures that the [broker] has at least qualified the borrower, and made a loan selection with the borrower's concurrence. These are non-trivial functions for which a payment is justified," the commenter said. The

commenter favored this "functional" test, as opposed to a regulatory limitation on the number of CLO services provided or a ban on single-lender CLOs.

Several comments from real estate brokers stated their support for the CLO services provision of the final rule. Among these, at least two real estate broker commenters assumed that CLO services would involve multiple lenders:

> [I assume that] all CLOs will offer the rates and costs of many lenders. When lenders realize that they are in competition with other lenders, they will be forced to deliver the best rates at the lowest cost * * *. I can assure you that if a home buyer walks into a lender's office to obtain a loan, there is little chance that lender would send the buyer to a competitor even though the rates and costs may be lower.

A second real estate broker described his company's CLO service as having access to an affiliate and 20 competitors, indicating that this variety and choice afforded borrowers with distinct advantages over borrower-initiated loan shopping.

(c) *Description of the Legal Framework for Analysis of Payments for CLO Services.* HUD has found that the use of the term "CLO exemption" in the preamble of the 1992 final rule may have created certain misperceptions. To ensure that there is no confusion about the scope of the regulatory exemption proposed below, the Department believes that it will be helpful to set out the legal framework for its analysis of payments for CLO services.

In general, the provision of CLO services may be financed by the operator of a CLO system in several ways:

(i) The operator could charge lenders to have information about their products displayed on the CLO system;

(ii) The operator could charge borrowers to use the CLO system;

(iii) The operator could charge both lenders and borrowers; and

(iv) The operator could provide the service free of charge to both lenders and borrowers in the belief that providing the service will attract more customers for the operator's related settlement service business.

Section 8(a) of RESPA prohibits a lender from paying a CLO operator a referral fee. Section 8(b) of RESPA prohibits a CLO operator from accepting a payment from a borrower "other than for services actually performed." Therefore, in the absence of any regulatory exemption, under RESPA:

(one) Payments by a lender to a CLO operator are subject to scrutiny to determine whether the payment is a referral fee or is bona fide compensation for goods or facilities actually furnished or for services actually performed;

(two) Payments by a borrower to a CLO operator are subject to scrutiny to determine whether the payment is a sham or duplicative charge, rather than a payment for goods or facilities actually furnished or services actually performed; and

(three) When neither borrowers nor lenders pay a fee for the CLO services, only certain disclosures are required.

The 1992 final rule created an exemption from Section 8 for "any payment by a *borrower* for computer loan origination services," as long as certain disclosures were provided (emphasis added). This rule did not address payments made by lenders, thus leaving such payments subject to Section 8 scrutiny. Although the term "CLO exemption" is frequently used, including in the preamble of the 1992 final rule, the exemption was not for the CLO itself, but only for payments made for CLO services by borrowers.

Many commenters were concerned about whether any system that merely claimed to be a CLO deserved to be given an exemption from RESPA's requirements. As noted in the above statement of HUD's objective, the Department seeks to encourage the use of new technology in ways that provide meaningful information and services to consumers. Uncertainty about how RESPA applies to CLOs may inhibit their development. Therefore, the Department has determined that continuation of such an exemption is justified; however, the Department seeks to limit the exemption only to payments for access to CLO systems that provide meaningful information and services to consumers. Payments for access to systems that provide such benefits will not be subject to scrutiny under Section 8.

Accordingly, the Department proposes to amend the 1992 final rule to limit the exemption to payments made by borrowers for services from "qualified CLOs" only, and to define qualified CLOs to be those systems that the Department believes provide meaningful information and services to consumers. Payments by borrowers for services of systems other than "qualified" CLOs are not prohibited; rather those payments are subject to scrutiny under the Section 8 test articulated above.

Similarly, the 1992 final rule did not mention payments made by lenders to CLO operators. However, having proposed to limit the scope of the exemption for borrower payments and certain lender payments, the Department asks commenters to address whether a parallel exemption for payments made by lenders to operators of "qualified CLOs" would be in the best interest of consumers.

(d) *Position of the Proposed Rule on CLOs.* Based upon a review of the comments and testimony on this issue, the Secretary concluded that the potential of CLOs to be convenient and provide consumers with meaningful information about their choices justified the encouragement of certain CLOs and the continuation of an exemption for borrower payments for certain CLOs. The Secretary also determined that it is necessary to amend the rule to define the type of CLO for which borrower payments are permitted without further RESPA scrutiny, in order to maximize the potential consumer benefits from this developing technology and protect consumers. Accordingly, the Secretary proposes to amend the rule to provide that payments made by borrowers for qualified CLO services only are exempt, and to define qualified CLOs as those systems meeting the following requirements:

(i) Qualified CLOs must be responsive to information about the borrower and provide information regarding loan options for that borrower. (This provision is responsive to commenters who feared that without definition, a system using FAX-transmitted data or even telephone calls might qualify as a CLO system.)

(ii) Qualified CLOs must meet certain fair participation and display requirements, including that participation and display of loan products from numerous lenders offering various loan products must be allowed, factors for selecting lenders to participate on the CLO system be fair and legitimate; and information on individual loan products must be displayed in a lender-neutral manner. While the Department recognizes that there are practical limits on the number of lenders that can be included usefully on a system, because of technological and other limitations, the proposed rule contemplates that a minimum of 20 lenders will participate on a qualified CLO system. (The Department asks for comments on whether this number is appropriate or another number would better ensure competition while providing a meaningful level of information to the consumer.) The exemption is still available when less than 20 lenders choose to participate, as long as the CLO system remains open to and accepts additional lenders. Selection of lenders for participation must be done as a result of the fair application of impartial criteria, which

may include, but are not limited to, the date of the lender's application for participation on the CLO system (*e.g.*, first-come, first-served), the quality of services and capabilities a lender provides to consumers, the types of loan products offered by a lender and its pricing practices, and the extent to which a lender's participation will increase the variety of loan products offered to consumers by the system. (The application of factors may not be used to avoid the 20 lender requirement.) CLO system operators must have a reasonable justification supported by documentation for selection decisions. No lender may be favored or disfavored by the *manner* in which information regarding the lender or its products is presented to the borrower or is utilized on the system, or by the scope of information that a particular lender is permitted to include as compared to another lender.

(iii) Qualified CLOs must provide borrowers with a CLO disclosure form that states that use of the system is not required, space on the system is limited, the full range of products meeting the borrowers' needs may not be listed on the system, and other lenders not listed on the system may offer better terms and conditions including lower rates. A disclosure format for this and other information is set forth in the proposed rule as Appendix E.

(iv) Qualified CLOs must charge borrowers the same fee for the same CLO service or the same components of service. The exemption does not attempt to fix a price for CLO services; market forces and market experiences should continue to shape the evolution and development of qualified CLO systems. Rather, where fees are charged, all borrowers must be treated equally. If fees are waived by a CLO provider, they must be waived fairly and not because of the choice of a particular lender. If the fee is contingent on use of a loan product on the system, the contingency must apply equally to all loan products and lenders on the system.

(v) An operator of a qualified CLO may also charge lenders for access to the system and for a portion of maintenance and operation costs of the system. However, the schedule of charges for each lender on the system must be identical. Furthermore, qualified CLOs must disclose to the borrower, on the form prescribed in Appendix E and on the HUD–1 or the HUD–1A, the amount of any anticipated payments by a lender.

(vi) Fees and disclosures about the CLO system must also be prominently displayed and visible to the potential borrower on the premises near where the CLO terminal is located. The information that more advantageous loan alternatives may exist that are not displayed on the system must be similarly disclosed.

(vii) Any borrower payment to a CLO operator for use of a qualified CLO must be paid outside of and before closing. A borrower must receive full disclosure of the amount of the fee before the CLO services are performed.

In this proposed rule, the Department is establishing the minimum requirements that must be met by a qualified CLO system if payments by a borrower to the operator of the system are to enjoy an exemption from RESPA. The Department believes that these requirements are responsive to the many comments on CLOs, and that compliance with the requirements will assure that: CLO systems receiving the benefit of the exemption are operated fairly; these systems will not be used as disguised means of steering borrowers to particular lenders on a basis other than the quality of services provided; and lenders wishing to participate in qualified CLO systems will be permitted to do so on a fair and equitable basis.

In addition, this proposed rule would continue and augment certain requirements for all providers of CLO services, whether or not the CLO is a qualified CLO. In all circumstances where a CLO is utilized, the CLO disclosure set forth in Appendix E must be provided to borrowers before the CLO services are performed. The existence of any controlled business arrangement involving the operator of a CLO and any participating lender must be disclosed to the borrower before the system is utilized. Similarly, lender payments to other settlement service providers for CLO services must continue to be disclosed on the Good Faith Estimate and on the HUD–1 or HUD–1A, in accordance with the February 10, 1994 (59 FR 6505) revision of the regulations, and the possibility of such payments must be noted on the CLO disclosure.

(e) *Questions and comments on this proposal.* In formulating the final rule, the Department may modify the requirements for the exemption, based on comments from the public. The Department seeks public comment on all aspects of its proposal to limit the exemption for borrower payments to payments made for qualified CLOs, including:

(i) Does the approach embodied in this proposal—establishing a safe harbor for borrower payments for qualified systems, continuing to scrutinize borrower payments for nonqualified systems under RESPA, and mandating certain disclosures for all systems—the best approach to encourage the use of technology to benefit consumers and, at the same time, protect consumers from unfair practices? Instead, should the Department provide that any payment for a CLO system that does not qualify for the safe harbor is presumed to violate RESPA? (Commenters who believe that there should be broader prohibitions should detail the legal and other justifications for this belief.)

(ii) Would establishment of a parallel exemption for payments made by lenders to operators of qualified CLOs be in the best interest of consumers? If so, should the requirements for a lender payment CLO exemption be the same as the requirements for the borrower payment exemption? Those commenters who believe the requirements should be different should specify what differences they recommend.

(iii) Are most CLO systems likely to be financed using borrower payments, lender payments, or a combination of both? Will any CLO system provide access to the system to lenders and borrowers free of charge?

(iv) Are the benefits of having borrower payments exempt from RESPA scrutiny sufficient to encourage CLO operators to develop qualified CLOs? Will CLO operators prefer to be subject to the general test under RESPA that borrower payments must be in exchange for services actually performed or to meet the requirements for qualified CLOs?

(v) Will the requirements for qualified CLOs in the proposal result in cost-effective CLOs offering meaningful services to consumers?

(vi) Is the requirement for CLO disclosure to consumers in this proposal reasonable and does it serve the consumers' best interests?

(vii) Is the definition of a qualified CLO sufficiently flexible, considering the nature of this emerging industry and the Secretary's consumer protection objectives?

(viii) Are the requirements concerning lender-neutrality and the selection of lenders on a qualified CLO reasonable?

(ix) Is the minimum number of lenders on a qualified CLO (i.e., 20) practical from an operational perspective? Is it sufficient to ensure competition? (If another number is suggested, please explain why this number would be superior in promoting competition and the consumers' interests?)

(x) Is the requirement that all disclosures be made before performance of CLO services reasonable?

(xi) What will be the impact of the requirement that any borrower

payments must be made outside of and before closing?

(xii) Does the requirement that qualified CLOs must provide the borrower with certain information about loans generally available; collect information about the borrower, the property, and the loan sought; and provide the borrower with information about loan products available to that borrower accomplish the intended objective of ensuring that a meaningful service is provided?

The Department anticipates that the Technology Demonstration that it plans to conduct (see Section I of this preamble) will also be a useful vehicle for developing answers to some of these questions.

(3) Issue 3: Preemption of State Laws or Regulations

In § 3500.13(b)(2), the November 2, 1992, final rule provided that "in determining whether provisions of State law or regulations concerning controlled business arrangements are inconsistent with RESPA or this part, the Secretary may not construe those provisions that impose more stringent limitations on controlled business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition." In connection with the preemption issue, the Department's July 6, 1993, notice requested comments on establishing standards to be used in evaluating whether provisions in State laws provide greater protection to consumers. The Department also invited any other comment relative to the preemption provision of the 1992 final rule.

(a) *Positions Taken by Commenters Critical of the Rule's Preemption Policy.* While the Department received hundreds of comments addressing the preemption question, this issue attracted fewer expressions of opinion than did the other three issues raised in the July 6, 1993, notice. Most of the commenters addressing the issue (excluding identical-form responses) were attorneys or major institutional commenters. However, even among the comments from organizations representing institutional interests or segments of the real estate and real estate finance industries, preemption was the least-frequently addressed of the four issues.

Commenters who were critical of other aspects of the rule had a mixed approach to the preemption issue and reflected suspicion of the Department's motives. These comments assumed that, despite the benign phrasing of § 3500.13(b)(2), HUD would (in light of the other features of the 1992 final rule) use preemption in the future to weaken State-initiated regulation of controlled business arrangements. Those commenters who shared this suspicion varied in their recommendations for improvement of the rule's preemption feature. Several commenters advised HUD to provide "greater clarity" regarding a State's right to *ban* or closely regulate controlled business arrangements. Other commenters referenced particular existing State laws that require controlled business entities to seek a substantial portion of their business from sources other than their affiliated entities. These commenters urged that HUD provide explicitly that State laws and regulations of this type would not be subject to preemption.

The tone of these comments suggested that the standard set out in the final rule—i.e., no preemption, so long as a State law affords "more protection to consumers and/or competition"— was insufficient assurance against Federal preemption. Apparently the final rule was perceived by the commenters as being "anti-consumer" in the guise of a consumer protection regulation. The commenters believed it was clear that State laws forcing controlled businesses to draw business from nonaffiliates should *never* be preempted under RESPA authority. The commenters were not persuaded that the Department intended to apply § 3500.13(b)(2) in a manner that would treat these State laws as "pro-consumer".

Concerned commenters made diverse recommendations: several asked the Department to clarify in the rule that preemption would not be applied; other commenters, clearly equally averse to preemption of State laws, recommended case-by-case judgments regarding preemption, using the existing standard set out in § 3500.13(b)(2). These latter commenters often combined their *status quo* recommendation with an urging that HUD modify or reverse positions taken on the employer-employee exception or CLO issues. Their thrust was that HUD's preemption policy would *not* be objectionable if the RESPA rule were modified to cure the specific problems being addressed by commenters in their accompanying remarks.

The combined comment of the 16 State Attorneys General stated the belief that it would be too difficult to "define criteria for preemption in the abstract." The comment recommended a case-by-case approach. (Again, this comment was made in the context of a strong statement of opposition to the final rule's employer-employee fee policy and CLO exemption.)

The predominant position of institutional commenters addressing the preemption issue was that it is unnecessary for HUD to set out strict standards to evaluate whether State law provisions provide greater protection to the consumer. However, there was considerable sentiment in favor of regulatory "clarifications" to serve, in essence, as guarantees that the Department would *not* preempt State laws in any instance where its goal was to limit controlled business arrangements. Consumers Union believed that HUD's own rules should be changed to afford consumers stronger protections, but, if this was not to be, "at the very least States should be free to protect their own consumers". Accordingly, Consumers Union favored the enunciation of standards for determining whether State law provisions provide greater protection:

> * * * These standards are necessary since the final rule is anti-consumer, but was presented as if it were pro-consumer. To eliminate any resulting ambiguity, HUD should clarify that [State-originated] rules totally eliminating any incentive to steer business to an affiliate would be viewed as stronger consumer protection.

A large number of comments received from individuals and small businesses (mainly lenders) *favored* the establishment of written standards for the evaluation of State laws. However, these comments offered no specific advice concerning the content of the favored written standards.

Comments submitted by the American Land Title Association (ALTA) claimed that the November 1992 rule on preemption had "frightened" State legislators and regulators "into believing that the RESPA disclosure provisions [would be read by HUD to] preempt more stringent state legislation or regulations." The ALTA expressed the belief that the new regulations were "perverting" congressional policy regarding the circumstances warranting preemption. The ALTA further claimed that the preemption provision suggests that "only *if the Secretary of HUD* determines that a state controlled business provisions gives more protection to consumers and competition would the state provisions *not* be preempted." (Emphasis in original.)

The ALTA also complained that the final rule was deterring State governments from considering more stringent regulation of controlled business, and suggested that the Department support legislative revisions to RESPA to replace "ineffective" consumer disclosure requirements with Federal "public business" requirements

(i.e., requirements that controlled businesses derive a significant proportion of their business from nonaffiliates).

One of the Federal agencies commenting on the rule, the Office of Thrift Supervision (OTS), suggested that separate review standards for preemption determinations were unnecessary and that HUD could employ a case-by-case analysis, using the review method outlined in § 3500.13(c) of the final rule. (OTS submitted comments critical of the final rule on the referral fee and CLO issues.)

(b) *Positions Taken by Supporters of the Preemption Provisions.* As in the case of commenters critical of the final rule, supporters of the rule commented less frequently on the preemption issue than any of the other questions raised in the July 6, 1993, notice. However, there was perhaps a greater gulf between supporters of the 1992 final rule and its opponents on this issue than on any other. As indicated earlier in this preamble, opponents of the rule expressed widespread fear that the Department would use its preemption power to nullify what the opponents perceived as salutary State regulation of controlled business. Proponents of the final rule *also* read § 3500.13(b)(2) of the rule as promising extensive HUD employment of preemption; however, these commenters welcomed it.

The commenters regarded RESPA as sufficient to provide consumers with protection against unfair pricing by settlement service providers. Often, the commenters claimed, State laws that purport to be protective of consumers are actually designed to benefit local settlement service providers, by hindering the entry of larger, broad-based providers into local markets.

Commenters appeared to assume that the chief intended target of preemption would be State laws directly or indirectly preventing real estate brokers from owning affiliated title businesses, prohibiting mortgage lenders from affiliating with title agencies, or restricting the percentage of business that can be derived from referrals from affiliated businesses.

A lender with nationwide business objected strongly to the inefficiencies it said resulted from multiple and inconsistent State law requirements. While these varying requirements are justified if they provide identifiable consumer benefits, the commenter said, they frequently represent attempts to limit competition among lenders, and actually increase the costs paid by consumers.

The experience in Kansas is instructive. After the state enacted a law limiting referrals to affiliated entities, many title agent affiliates of real estate brokers and mortgage companies were forced out of business. Freed from the need to compete with such providers, we understand that independent title agents increased their rates by approximately 60%. The Department need look no further than this example to recognize that protection of "turf," rather than protection of consumers, is normally at the heart of such limitations.

The commenter went on to urge that HUD make clear that State limitations affecting controlled business arrangements are preempted by RESPA.

One commenter said that RESPA regulations encourage nationwide service providers to diversify their product offerings and enter new geographic markets. Accordingly, Federal preemption of adverse State laws would result in increased competition.

While a few commenters appeared to be recommending summary preemption of the array of State laws affecting controlled business, other commenters, responding to the Department's direct question, urged the establishment of standards for the case-by-case determination of whether State laws or regulations are inconsistent with RESPA in the controlled business area, i.e., whether a particular law "give(s) more protection to consumers and/or competition" than does RESPA.

One commenter suggested that the final rule's treatment of preemption should be fundamentally changed because it is "unclear and vaguely worded": "What is meant by 'stringent limitations' and 'give more protection to * * * competition?'"

Another commenter cited the legislative history of the 1983 RESPA amendments as indicating Congress' expectation that, if necessary to protect consumers or encourage competition, HUD would recommend further legislation to place a percentage limitation on the amount of controlled business that could be transacted. The commenter observed that in the ten years since the controlled business exemption became law, HUD has not recommended further legislation in this area. Additionally, the commenter claimed, many State governments have not seen the necessity of enacting restrictions on the percentage of business that can be derived from affiliated entities. The commenter concluded that State "percentage of business" laws were inconsistent with RESPA and should be preempted as anticompetitive.

(c) *Position on Preemption in the Proposed Rule.* Based upon the comments and testimony, the Secretary has determined that it is unnecessary at this time to set out specific written standards for preemption of State laws. As numerous commenters, including the State Attorneys General, observed, setting out comprehensive and informative preemption standards presents an almost insurmountable task, in the absence of a wide array of specific fact situations that are raising preemption issues. If it becomes necessary to consider this issue further, the Secretary may reopen the issue by rulemaking or deal with specific preemption issues by means of interpretive rules. No amendments are proposed on this subject in this rule.

(4) Issue 4: Adequacy of the Controlled Business Disclosure Statement

In § 3500.15(b)(1) of the 1992 final rule, provision was made for "written disclosure, in the format of the Controlled Business Arrangement Disclosure Statement set forth in appendix D of this part." This disclosure referred to certain information regarding the ownership and financial relationships between referring and referred-to parties, as well as information regarding the timing of the disclosure and other methods for disclosure.

HUD solicited the views of commenters in its July 6, 1993, **Federal Register** notice concerning whether the controlled business disclosures outlined in appendix D "are adequate to protect the consumer, and, if not, how they might be improved."

(a) *Comments Critical of the Disclosure Statement.* A majority of the commenters expressing dissatisfaction with one or more features of the 1992 final rule's employer payments provisions also objected to the Controlled Business Arrangement Disclosure Statement set out in Appendix D to part 3500.

Generally, these objections were twofold. First, commenters argued that even the best and most complete form of disclosure imaginable was not an effective means of coping with what the commenters perceived as anticonsumer aspects of controlled business arrangements. Second, opposition commenters urged that if, against their advice, HUD continued to sanction referral payments by employers to employees, the form of disclosure required should be strengthened substantially, and the timing of the required disclosure should be pinpointed for maximum effect in affording consumers a realistic opportunity to choose alternative settlement service providers.

More than 800 comments from lenders and settlement attorneys urged expansion of the controlled business disclosure to assure that borrowers understand that the referral "will provide a financial benefit to the related parties."[4]

Perhaps the most comprehensive criticism of the disclosure policy was expressed by the 16 State Attorneys General in their comments. After criticizing both the referral payments provision and the CLO exemption, the Attorneys General said that they were skeptical that disclosures can remedy the inherent dangers to consumers when there are financial incentives for referrals of business. Conceding that the 1983 RESPA amendments expressly permitted controlled business arrangements, the Attorneys General urged that the disclosure contemplated by the regulatory amendment "be as clear and explicit as possible to alert consumers to the potential for harm." The comment advocated that the disclosure form state with greater clarity the purpose for which a disclosure is made and the harm against which it is aimed.

Specifically, the State Attorneys General criticized as vague the form's reference to a "business relationship" and advocated the inclusion of a statement that, in making the referral to the controlled business, the referring company or agent (to be identified by name) would benefit "financially or otherwise." The State Attorneys General wanted the form to indicate that, in addition to lower rates, consumers might receive "better services" by shopping around. "Indeed, consumers must be affirmatively encouraged to shop around * * * consumers should be warned in clear, unambiguous language of the pitfalls of relying on a controlled business referral and encouraged to make intelligent choices among settlement service providers." Consumers should also be told in explicit terms, the comment continued, that they are "free to choose [their] own settlement service provider and will not be denied any services or loan for exercising this choice."

Finally, the State Attorneys General favored disclosure of the "existence of and amounts of" any fees or kickbacks paid, directly or indirectly, to the real estate broker or another referring party, or to an affiliated provider, for the performance of settlement services. A large number of individual commenters and the Coalition to Retain Independent Services in Settlements (CRISIS) echoed this position.

The CFA disparaged disclosure, by itself, as being an "inadequate remedy for the market risks that consumers are exposed to in the purchase of real estate":

> The Department's rule has placed before the consumer a new array of fees for which the delivery of the equivalent of a tollgate ticket is hardly ample protection.
>
> One of the central problems of controlled business arrangements is that the underlying purchase is carried out under conditions of urgency and stress that will always overwhelm a captive consumer. The ability to distinguish between what must be done—and purchased—and what is optional, is limited.

The MBA advocated elimination of the employer-employee referral fee exception, but urged that, at least, the disclosure form should be expanded to include the existence and amount of the referral fee. Similar advice was received from Consumers Union and from individual commenters.

The FDIC also expressed some doubt about the efficacy of written disclosure, calling the disclosure form "just one of dozens of confusing papers handed to [consumers] over the course of a real estate transaction." FDIC nevertheless advocated strengthening the form by requiring the disclosing entity to meet specific content guidelines and to use layman's language, "* * * so less opportunity [is] given for 'creative writing'." The FDIC also advocated the use of an acknowledgement line or box on the form, to show that the consumer had read and understood the controlled business arrangement disclosure.

The Office of Thrift Supervision (OTS), while expressing concern about employer-employee referral fees and the efficacy of CLO disclosures, commented that the content and timing requirements for controlled business disclosures, as set out in the final rule, seemed adequate to protect consumers.

Departing from the recommendations of other commenters to the effect that the disclosure form should be expanded to highlight the presence of referral fees and other relationships between the referrer and the service provider, ALTA's spokesman called the disclosure process "worthless as a consumer protection measure in the settlement services arena." The ALTA claimed that the consumer is likely to rely upon the recommendation of a trusted professional, "even where a personal financial inducement is disclosed." ALTA's spokesman advocated legislative solutions, including amendment of RESPA to permit a competitor's right of action and the institution of blanket prohibitions on controlled businesses.

(b) *Comments from Supporters of the Final Rule's Disclosure Statement.* The Department received detailed comments on controlled business disclosure policy from more than a dozen commenters who supported the final rule in most of its particulars. Typically, these commenters believed that the form and level of detail of disclosure of controlled business arrangements that were in the final rule were "more than adequate" to permit informed choice by consumers concerning settlement service providers.

Several commenters pointed out that the required form of disclosure appeared to exceed the statutory disclosure requirements in several respects. One, the commenters urged that the statute required only that the "existence" of a financial interest be disclosed, while the regulation required that the disclosure outline the "ownership and financial interest." Two, the regulation requires that all disclosures, not just those related to costs, be made in writing. Three, the regulations require *separate* disclosure of controlled business relationships. Finally, the "suggested format" for the disclosure (although not the regulation itself) includes the caution: "You may be able to get these services at a lower rate by shopping with other settlement service providers."

Most commenters who raised these points did not address them as objections to, or criticisms of, the 1992 final rule. Instead, these observations were cited as indications that, in the commenters' views, the rule already was suitably attentive to consumer protection concerns, in that it went beyond bare-bones statutory disclosure requirements. Several of these comments went on to urge that the Department continue to limit its RESPA regulations to disclosure-related concerns, and *not* bend to the will of advocates of other methods of regulating or curbing controlled business arrangements:

> RESPA is predicated on the belief that consumers, when provided with appropriate disclosures, are capable of making informed decisions. Those who argue otherwise frequently do so only to protect their competitive position, not to advance the interests of consumers. * * * [T]he information contained in the existing controlled business arrangement disclosures is sufficient and the requirements should not be disturbed.

[4] HUD notes that the Appendix D disclosure format already requires: (1) Disclosure of the nature of the relationship between the referring party and the prospective provider of the service, including ownership or other financial interests; (2) estimates of the charges for the service or services; and (3) a statement that the consumer "may be able to get these services at a lower rate by shopping with other settlement service providers." (57 FR 49600, 49622; November 2, 1992.)

The Federal Reserve Board's comment agreed that the controlled business disclosure policy set out in the rule and the format were "more than adequate" as disclosures. "* * * [I]f anything, it may be over-disclosing given the quantity of information that a consumer receives when applying for a mortgage loan." A few lender-commenters expressed a similar view. The Federal Reserve suggested that the consumer needs to know that the two parties involved in the referral are related, but may not need further details. While the Federal Reserve agreed it is important that the consumer know that use of the provider is not required, it suggested that including the estimated charges for the service was "redundant," since such costs would have been disclosed on the Good Faith Estimate.

One lender argued that controlled business arrangements arise in a variety of situations, and that it is "impossible" to mandate the use of a form that is suitable for all providers in all situations. The commenter asked the Department to provide for flexibility concerning format, "as long as consumers are informed of the referral and the relationship between the parties."[5]

Another comment urged that the controlled business disclosure form *not* be required for disclosure of the specific providers of "lender required services such as credit reports, appraisals, [or] flood plain searches." The commenter suggested that early disclosure of the identity of these providers was impractical and provided "absolutely no benefit to the consumer." The information, the commenter concluded, would appear on the HUD–1 Settlement Statement.

The most frequent criticism of the rule's controlled business disclosure requirements from commenters supportive of the rule was that, in some instances, it was unclear when a controlled business arrangement was required to be disclosed. Several commenters asked whether the disclosure was required when a bank has a wholly-owned subsidiary mortgage company or when a mortgage company is a wholly-owned subsidiary of the same holding company as the bank.

[5] The same commenter, a lender, asked for more flexibility in the *timing* of the controlled business disclosure. Many referrals do not occur at face-to-face meetings between the consumer and the referring party, the commenter suggested, and asked that the rule clarify that the service provider be required to furnish a disclosure "at the time of the initial contact between the consumer and the provider."

The situations in which related businesses were required to make disclosure also were questioned. One commenter asked whether, if a bank is affiliated with a mortgage company by common ownership, the bank has to make disclosures to consumers in the following circumstances:

- When a consumer is directly referred to the mortgage company for a mortgage loan;
- When the consumer is simply informed of the availability of loans from the mortgage company; and
- When the bank includes references to the mortgage company in its advertising or its brochures.

One commenter, stating that the entire category of "referrals" was not intended to fall within the coverage of the controlled business arrangement rules, recommended creation of an exemption to the controlled business arrangement rules for "'referrals' between bank holding companies' wholly-owned subsidiaries." Two commenters asserted that failing to provide this exemption would be placing mortgage companies within bank holding companies at a competitive disadvantage when compared to bank mortgage departments. "The purpose of RESPA is not to dictate the form in which a bank structures its lending business."

(c) *Position Taken in the Proposed Rule on the Controlled Business Disclosure Statement.* The Secretary concluded that the elimination of the employer-employee exception would, in turn, eliminate a number of the strongest concerns regarding the information in the controlled business disclosure. However, the Secretary has accepted some suggestions for modifications to the disclosure as useful and beneficial to the consumer. Accordingly, certain of these suggestions have been included in the proposed rule and in the format of Appendix D.

The suggested borrower-acknowledgement box has been added to the controlled business disclosure format. Additional plain language has been added to the format. Section 3500.15(b) proposes a requirement that disclosure be given at a time to be relevant to the consumer: either (i) at the time of referral or no earlier than 3 days before; or (ii) if the lender requires the use of a particular provider, the time of the loan application. The preamble of revisions that extended RESPA coverage to subordinate lien transactions (59 FR 6505, 6510, February 10, 1994) also discussed the appropriateness of disclosures, stating that "incidental and uncompensated referrals, such as brochures in a bank lobby or street directions given by a bank employee, are not perceived as rising to the level necessary to require a controlled business disclosure."

More sweeping modification of the controlled business disclosure form is not considered necessary. While many commenters disparaged the use of written disclosure as a means of coping with perceived controlled business-related problems, the Department continues to believe that full disclosure is useful as a means of informing consumers. Disclosure is also a preeminent principle of the RESPA statute.

V. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, other than those impacts specifically required to be applied universally by the RESPA statute.

Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. A Regulatory Impact Analysis (RIA) performed on this proposed rule is also available for review at the same address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or

their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Promulgation of this rule expands coverage of the applicable regulatory requirements pursuant to statutory direction.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as Item 1586 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20447), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3500

Consumer protection, Housing, Mortgages, Real property acquisition, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 3500 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for part 3500 would continue to read as follows:

Authority: 12 U.S.C 2601 *et seq.*

2. Section 3500.2, effective on August 9, 1994 (February 10, 1994 at 59 FR 6505, 6511), is amended by adding, in alphabetical order, definitions for "CLO", "CLO access fee", "CLO operator", "CLO services", "CLO system", "managerial employee", and "qualified CLO system", and by removing the word "and" at the end of paragraph (14), redesignating paragraph (15) as paragraph (16), and adding a new paragraph (15) to the definition of "settlement service", to read as follows:

§ 3500.2 Definitions.

* * * * *

CLO means computer loan origination.

CLO access fee means a fee paid by a borrower to a CLO operator for CLO services.

CLO operator means a provider of settlement services who operates a CLO system for a borrower.

CLO services means services provided to a borrower by a CLO operator using a CLO system.

CLO system means a computer system that:

(1) Provides to prospective borrowers information regarding the rates and terms of federally related mortgage loans;

(2) Collects, assembles, and transmits information concerning the borrower, the property, and other information on a potential mortgage loan for evaluation by a lender(s); and

(3) Based on the data transmitted, responds to the borrower with detailed information, including, without limitation, loan terms, rates, and payment schedules for various loan products that would be available to the borrower from such lender(s).

* * * * *

Managerial employee means an employee of a settlement service provider who does not routinely deal directly with the public, and who either hires, directs, assigns, promotes, and rewards other employees or is in a position to formulate, determine, or influence the policies of their employer. Neither the term "managerial employee" nor the term "employee" includes real estate agents or other independent contractors.

* * * * *

Qualified CLO system means a CLO system that meets the requirements of § 3500.14(g)(3).

* * * * *

Settlement service * * *

(15) Provision of CLO services; and

* * * * *

3. Section 3500.14 is amended by revising paragraph (g)(2); by redesignating paragraphs (g) (3) and (4) as paragraphs (g) (5) and (6), respectively; and by adding new paragraphs (g) (3) and (4), to read as follows:

§ 3500.14 Prohibition against kickbacks and unearned fees.

* * * * *

(g) * * *

(2) Section 8 of RESPA does not prohibit normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or other related business.

(3) Section 8 of RESPA does not prohibit any payment by a borrower for CLO services provided by a qualified CLO system that provides CLO services and meets the following requirements:

(i) *Multiple Products and Lenders.* The qualified CLO system shall provide openings for 20 or more lenders offering various loan products. The factors for selecting the lenders to be included on a qualified CLO system (see paragraph (g)(3)(ii) of this section) may not be designed to limit or have the effect of limiting eligibility to less than 20 lenders. When the qualified CLO system has less than 20 lenders, the system shall remain open to and accept additional lenders until at least 20 lenders participate.

(ii) *Selection Factors.* To determine eligibility for inclusion in the system, the qualified CLO system shall utilize selection factors that are fair and impartial and are designed to contribute to the efficiency and quality of the system. These factors may include, but are not limited to, the date of the lender's application for participation on the qualified CLO system, the quality of services and capabilities the lender provides to consumers, the types of loan products offered by the lender and its pricing practices, and the extent to which the lender's participation will increase the variety of loan products offered to consumers by the system. Qualified CLO system owners shall have a reasonable justification for selection decisions, supported by documentation which they must maintain.

(iii) *Neutrality.* The CLO operator of a qualified CLO system and the qualified CLO system shall provide borrowers with information in a neutral manner. No lender shall be favored or disfavored by the manner in which information regarding the lender or its products is utilized or is presented to the borrower, is used on the system, or is presented by the CLO operators, or by the scope of information that one lender is permitted to include as compared to another lender. No payments, disincentives, or penalties may be provided directly or indirectly to CLO operators of qualified CLO systems by any person, including the CLO operator's employer, to influence the CLO operator to favor any lender on the qualified CLO system.

(iv) *Disclosure Statement.* The CLO operator of a qualified CLO system shall provide a CLO disclosure form to the borrower before CLO services are performed. The CLO operator shall require the borrower to sign on the CLO disclosure form an acknowledgment that the borrower has received the disclosure. An enlarged, completed copy of the CLO disclosure form (no

smaller than 16" by 20"), including any applicable fee, shall be displayed prominently within 5 feet of the CLO terminal. The CLO disclosure form shall:

(A) Be in the format established in Appendix E of this part;

(B) Specify the fee and services being provided; and

(C) Include statements that use of the system is not required; space on the system is limited; the full range of products meeting the borrower's needs may not be listed on the system; and other lenders not listed on the system may offer better terms and conditions, including lower rates.

(v) *CLO Access Fee.* The CLO operator of a qualified CLO system shall charge all borrowers using the qualified CLO system the same CLO access fee(s) for the same service or the same components of service. The CLO operator of a qualified CLO system shall require the borrower to pay any CLO access fee outside of and before the closing of any loan that may be obtained through use of this system. The CLO operator of a qualified CLO system may only waive the CLO access fee based on business considerations of the operator and not on any action of a lender. If the payment of the CLO access fee is contingent on use of a loan product on the qualified CLO system, the contingency shall apply equally to all loan products and lenders on the qualified CLO system.

(vi) *Lender Charges for Access.* The CLO operator of a qualified CLO system may charge lenders for access to the qualified CLO system if:

(A) Charges are set forth in a written schedule of charges;

(B) Charges for the same services and components of services are the same for all lenders on the system; and

(C) The charges are reasonably related to the costs of maintenance and operation of the qualified CLO system (*i.e.*, the facilities furnished or the services actually performed).

(4) Any payment by a borrower to a CLO operator for services from a nonqualified CLO system, and any payments by a third party settlement service provider to a CLO operator for access to any CLO system in relation to a federally related mortgage loan, will be subject to examination under Section 8 of the Act and this part. The disclosure format set forth in Appendix E of this part and Box 2 of Appendix E of this part shall be utilized by all CLO operators for all CLO systems and shall be completed before any CLO services are performed.

* * * * *

4. Section 3500.15 is amended by revising paragraph (b)(1); by removing the word "and" at the end of paragraph (b)(3)(i)(A); by removing the period at the end of paragraph (b)(3)(i)(B) and replacing it with "; and"; and by adding paragraph (b)(3)(i)(C), to read as follows:

§ 3500.15 Controlled business arrangements.

(b) * * *

(1) The person making a referral has furnished to each person whose business is referred a written disclosure, in the format of the Controlled Business Arrangement Disclosure Statement set forth in Appendix D of this part. This disclosure shall specify the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral, and shall describe the estimated charge or range of charges (using the same terminology, as far as practical, as Section L of the HUD–1 or HUD–1A settlement statement) generally made by the provider of settlement services. The disclosure must be provided on a separate piece of paper at or no earlier than 3 business days before each referral, or, if the lender requires the use of a particular provider, the time of loan application, except that:

* * * * *

(3) * * *

(i) * * *

(C) No agent or employee may accept any payment from his or her principal or employer or any other source when that payment is correlated on a one-to-one basis or calculated as a multiple of the number or value of any referrals of business from his or her employer or principal to an affiliated entity. For example, no person shall pay any managerial employee or any employee or agent who is in direct contact with the public a bonus or other compensation correlated on a one-to-one basis or calculated as a multiple of the number or value of any referral of settlement service business by the employee or the employee's organizational unit to an entity affiliated with the employer or principal. In addition, no compensation of an employee or agent who is routinely in direct contact with the public may be based in whole or in part on the number or value of referrals that the employee or agent makes to affiliated entities.

5. Appendix B to part 3500 is amended by revising Illustration 11 to read as follows:

Appendix B to Part 3500—Illustration of Requirements of RESPA

* * * * *

11. *Facts:* A, a mortgage lender, is affiliated with B, a title company, and C, an escrow company, and offers consumers a package of mortgage title and escrow services at a discount from the prices at which such services would be sold if purchased separately. Neither A, B, or C, requires consumers to purchase the services of their sister companies, and each company sells such services separately and as part of the package. A also pays its employees (i.e., loan officers, secretaries, etc.) a bonus for each loan, title insurance, or closing that A's employees generate for A, B, or C. A pays such employees bonuses out of its own funds and receives no bonuses or reimbursements for these bonuses from B or C. At or before the time that customers are told by A or its employees about the services offered by B and C and about the package of services that is available, the customers are provided with a controlled business arrangement disclosure form.

Comments: Selling a package of settlement services at a discount is not prohibited by RESPA. Also, A may compensate its own employees for business generated for A's company, but A may not directly or indirectly compensate A's employees who are routinely in contact with consumers for business generated for B or C. Nor may B or C directly or indirectly compensate A or A's employees for business referred to B or C by A's employees. Sections 3500.15(b)(3)(i) (A) and (B) set forth the permissible exchanges of funds between controlled business entities. No employee or agent may receive compensation correlated on a one-to-one basis or calculated as a multiple of the number or value of referrals of business to an affiliated entity. Nothing in the RESPA rule prohibits bonuses or other compensation based, in part, on the generation of business by A to B and C being paid to managerial employees who are not routinely in contact with consumers.

6. Appendix D to Part 3500 is revised to read as follows:

Appendix D to Part 3500

Controlled Business Arrangement Disclosure Statement Format Notice

To: _____

From: _____

(Entity Making Statement)

Property: _____

Date: _____

This is to give you notice that [referring party] has a business relationship with [provider receiving referral] . [Describe the nature of the relationship between the referring party and the provider, including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [referring party] a financial or other benefit.

Set forth below is the estimated charge or range of charges by [provider] for the following settlement services:

_____: $_____

_____: $_____

_____: $_____
_____: $_____
_____: $_____

You are NOT required to use [provider] as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. YOU MAY BE ABLE TO GET THESE SERVICES OR BETTER SERVICES AT A LOWER RATE BY SHOPPING WITH OTHER SETTLEMENT SERVICE PROVIDERS, AND THIS IS SOMETHING YOU SHOULD CONSIDER DOING.[1]

A lender is allowed to require the use of an attorney, credit reporting agency, or real estate appraiser chosen to represent the lender's interest.[2]

Acknowledgment

[I/we have read this disclosure form and understand its contents, as evidenced by my/our signature(s) below.][2]

[I/we have read this disclosure form, and understand that [referring party] is referring me/us to purchase the above-described settlement services from [provider receiving referrals], and may receive income as the result of this referral.]

_____
(Applicant's signature)

_____
(Co-applicant's signature)

_____

_____

[1] Where the lender is requiring an attorney, credit reporting agency, or real estate appraiser to represent its interests, this paragraph and the corresponding acknowlegment should be omitted.

[2] Use this paragraph and acknowledgment for disclosures involving required attorneys, credit reporting agencies, or real estate appraisers and omit the second acknowledgment. For all other disclosures, use the second acknowledgment.

[Specific timing rules for delivery of the controlled business disclosure are set forth in 24 CFR 3500.5(b)(1)(i) (Regulation X).]

7. Appendix E to part 3500 is revised to read as follows:

Appendix E to Part 3500

CLO Fee Disclosure

To: _____
[Potential Borrower]
From: _____
[Person Making Disclosure]

NOTICE: I have available a Computer Loan Origination System (CLO), a computer system that can access a variety of mortgage loans and rates. The CLO is available to you under the following conditions:

1. [ ] You are obligating yourself today to pay $_____, outside of and before the settlement of any loan that may be obtained through use of this system by _____ check, _____ credit card, _____ cash, _____ other _____. (specify)

2. [ ] You will not be charged a direct fee, but the lender who funds your loan will pay us a fee related to your loan estimated to be $_____, which will likely be recovered by the lender in the cost of your loan.

3. [ ] I am providing you access to the CLO without a separate charge.

USE OF THIS SYSTEM IS NOT REQUIRED. SPACE ON THE SYSTEM IS LIMITED, THE FULL RANGE OF PRODUCTS MEETING YOUR NEEDS MAY NOT BE LISTED, AND BETTER TERMS AND CONDITIONS, INCLUDING LOWER RATES, MAY BE AVAILABLE FROM OTHERS NOT LISTED ON THE SYSTEM.

[INSTRUCTIONS: Include the following text, when applicable. Instructions in square brackets, including these instructions, should be omitted, as appropriate.] [(Name of operator of the system) has an affiliated business relationship with (name(s) of lender(s) on the system under which this overall organization gains financially if you enter into a mortgage loan with them. A further explanation of this business relationship is set forth in the controlled business arrangement disclosure form that is also being given to you at this time.]

The following services will be provided:

[ ] Displaying a variety of mortgage loans and rates that may be available to you.

[ ] Counseling you regarding the different types of loans available and the relative rates in a fair and equitable manner.

[ ] Relating your financial needs with available mortgage loan programs; and assisting you in deciding which, if any, meet your needs.

[ ] Entering information regarding you into the Computer Loan Origination System.

[ ] Reviewing responses to submitted information.

[ ] Other _____

Acknowledgment

I/we have read this disclosure form, and understand its contents, as evidenced by my/our signature(s) below.

_____
Applicant's signatures

_____
Co-Applicant's signature

Date: July 14, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-17598 Filed 7-20-94; 8:45 am]
BILLING CODE 4210-27-P

federal register

Thursday
July 21, 1994

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 862, et al.

Medical Devices; Proposed Exemptions From Premarket Notification for Certain Classified Devices; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892

[Docket No. 94M–0260]

Medical Devices; Proposed Exemptions From Premarket Notification for Certain Classified Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt 164 generic types of class I devices from the requirement of premarket notification, with limitations. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public.

DATES: Submit written comments by October 19, 1994. FDA is proposing that any final rule that may issue based on this proposed rule become effective 30 days after the date of its publication in the **Federal Register.**

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

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (Pub. L. 94–295, hereinafter called the amendments) and the Safe Medical Devices Act of 1990 (the SMDA), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) establishes three classes of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I, general controls; class II, special controls; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from, among other things, the requirement of premarket notification in section 510(k) of the act (21 U.S.C. 360(k)). Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA. When FDA issued proposed regulations classifying preamendments devices, the agency focused on granting exemptions from the requirement of premarket notification principally when the advisory panels included them in their recommendations to the agency. Subsequently, FDA decided to exempt certain additional class I devices from the requirement of premarket notification in order to reduce the number of unnecessary premarket notifications. This action helped to free agency resources for the review of more complex notifications to FDA.

Previously, FDA exempted 293 generic types of class I devices from the requirement of premarket notification, with limitations. Some of these devices were exempted from the requirement of premarket notification when the devices were initially classified into class I. However, the majority of these devices were exempted from the requirement of premarket notification after being classified into class I. These subsequent exemptions from the requirement of premarket notification appear in the following **Federal Register** publications (see Table 1).

TABLE 1

Date	Federal Register citation	Type of device	No. of devices
Aug. 25, 1987	52 FR 32110	Ear, Nose and Throat	4
June 8, 1988	53 FR 21447	Clinical Chemistry and Toxicology	21
Sept. 14, 1988	53 FR 35602	Ophthalmic	55
Dec. 29, 1988	53 FR 52952	Orthopedic	7
Apr. 5, 1989	54 FR 13826	General and Plastic Surgery	8
Apr. 5, 1989	54 FR 13828	Dental	22
Apr. 5, 1989	54 FR 13831	Radiology	4
June 12, 1989	54 FR 25042	Hematology and Pathology	24
		Immunology and Microbiology	37
		Anesthesiology	13
		Cardiovascular	3
		Gastroenterology and Urology	9
		General Hospital and Personal Use	6
		Neurological	7
		Obstetrical and Gynecological	3
		Physical Medicine	2

II. Description of Proposed Exemptions

In considering whether to exempt additional class I devices from premarket notification, FDA focused on whether notification for the type of device is unnecessary for the protection of the public health. For the devices proposed in this document to be exempted from premarket notification, FDA has concluded that notification is unnecessary primarily for the following reasons:

(1) The device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA generally has considered the frequency, persistence, cause, or seriousness of such claims or risks, as well as other factors deemed relevant.

(2) In general, the following factors apply: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that

could affect safety and effectiveness will either: (i) Be readily detectable by users by visual examination or other means, such as routine testing, before causing harm, e.g., testing of a clinical laboratory reagent with positive and negative controls; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) any changes in the device would not be likely to result in a change in the device's classification.

FDA has made the determinations described above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. If FDA has concerns only about certain types of changes to a particular class I device, the agency may grant a limited exemption from premarket notification for that generic type of device. A limited exemption will specify the types of changes to the device for which manufacturers are required to submit a premarket notification. For example, FDA may exempt a device from the requirement of premarket notification except when a manufacturer intends to use a different material.

FDA advises manufacturers that an exemption from the requirement of premarket notification is not an exemption from any of the other general controls, including current good manufacturing practices (CGMP's), unless explicitly stated. Indeed, FDA's decision to propose 510(k) exemptions for these devices is based, in part, on the fact that compliance with CGMP's will help insure product quality.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device will be based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change or modification of a class I device exempt from premarket notification requirements that could significantly affect the safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification are still required to submit a premarket notification to FDA before introducing a device or delivering it for introduction into interstate commerce for commercial distribution when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of the preamendments device to which it has been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals; or

(2) The modified device operates using a different fundamental scientific technology than used by the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Such changes or modifications to class I devices that are exempt from premarket notification would mean the exemption would no longer apply. Changes or modifications to devices that are not exempt from premarket notification requirements under any regulation must undergo a more comprehensive assessment to determine the impact of the change or modification on the device's safety and effectiveness. FDA intends to develop guidance clarifying when a change or modification to a device requires submission of a premarket notification as defined in 21 CFR 807.81(a)(3).

On the dates listed, FDA published final regulations classifying, among others, the devices listed below. When FDA classified these devices, the agency did not propose exempting them from the requirement of premarket notification. Based on the analysis described above, FDA has now determined that premarket notification with respect to the devices listed below is unnecessary for the protection of the public health and will not advance FDA's public health mission. This approach is consistent with the recommendation in the May 1993 report of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, entitled "Less Than the Sum of its Parts Reforms Needed in the Organization, Management, and Resources of The Food and Drug Administration's Center for Devices and Radiological Health."

Earlier this year, the Office of Device Evaluation undertook a risk assessment of all devices in order to ensure the proper allocation of resources in the review process. All of the class I devices listed below were placed in Tier I, the category of devices which have a minimal inherent risk and whose review focuses upon intended use. A number of class II devices were also included in the Tier I evaluation process. FDA intends to consider proposing exemptions from the requirement of premarket notification for these devices. In the near future, FDA believes that exempting these devices from premarket notification will allow the agency to better use its available resources to protect the public health.

FDA is proposing to exempt from the requirement of premarket notification, with limitations, the 164 generic type of class I devices listed in Table 2 below:

TABLE 2

CFR part	Title	No. of devices proposed to be exempt
862	Clinical Chemistry and Clinical Toxicology Devices; May 1, 1987 (52 FR 16102)	7
864	Hematology and Pathology Devices; September 12, 1980 (45 FR 60576)	6
866	Immunology and Microbiology Devices; November 9, 1982 (47 FR 50814)	8
868	Anesthesiology Devices; July 16, 1982 (47 FR 33130)	5
870	Cardiovascular Devices; February 5, 1980 (45 FR 7904)	1
872	Dental Devices; August 12, 1987 (52 FR 30082); November 20, 1990 (55 FR 48436)	38
874	Ear, Nose and Throat Devices; November 6, 1986 (51 FR 40378)	4
876	Gastroenterology-Urology Devices; November 23, 1983 (48 FR 53012)	1
878	General and Plastic Surgery Devices; June 24, 1988 (53 FR 23856)	16
880	General Hospital and Personal Use Devices; October 21, 1980 (45 FR 69678)	13
882	Neurological Devices; September 4, 1979 (44 FR 51726)	14
886	Ophthalmic Devices; September 2, 1987 (52 FR 33346)	36
888	Orthopedic Devices; September 4, 1987 (52 FR 33686)	5
890	Physical Medicine Devices; November 23, 1983 (48 FR 53032)	6

TABLE 2—Continued

CFR part	Title	No. of devices proposed to be exempt
892	Radiology Devices; January 20, 1988 (53 FR 1554)	4
Total		164

TABLE 3.—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

Section	Device
862.2270 ..	Thin-layer chromatography system for clinical use.
862.2310 ..	Clinical sample concentrator.
862.2320 ..	Beta or gamma counter for clinical use.
862.2485 ..	Electrophoresis apparatus for clinical use.
862.2720 ..	Plasma oncometer for clinical use.
862.2800 ..	Refractometer for clinical use.
862.2920 ..	Plasma viscometer for clinical use.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 3 above. However, the proposed exemptions for the clinical sample concentrator (§ 862.2310), the beta or gamma counter for clinical use (§ 862.2320), the electrophoresis apparatus for clinical use (§ 862.2485), the plasma oncometer for clinical use (§ 862.2720), the refractometer for clinical use (§ 862.2800), and the plasma viscometer for clinical use (§ 862.2920) are limited and would apply only to those products intended for general use, which make no specific claims, and which include submissions containing a certified statement that the requirements for labeling of in vitro diagnostic products contained in 21 CFR 809.10 will be followed.

TABLE 4.—HEMATOLOGY AND PATHOLOGY DEVICES

Section	Device
864.2280 ..	Cultured animal and human cells.
864.5350 ..	Microsedimentation centrifuge.
864.7660 ..	Leukocyte alkaline phosphate test.
864.7675 ..	Leukocyte peroxidase test.
864.7900 ..	Thromboplastin generation test.
864.8500 ..	Lymphocyte separation medium.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 4 above.

TABLE 5.—IMMUNOLOGY AND MICROBIOLOGY DEVICES

Section	Device
866.5170 ..	Breast milk immunological test system.
866.5220 ..	Cohn fraction II immunological test system.
866.5230 ..	Colostrum immunological test system.
866.5360 ..	Cohn fraction IV immunological test system.
866.5370 ..	Cohn fraction V immunological test system.
866.5540 ..	Immunoglobulin G (Fd fragment specific) immunological test system.
866.5570 ..	Lactoferrin immunological test system.
866.5700 ..	Whole human plasma of serum immunological test system.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 5 above.

TABLE 6.—ANESTHESIOLOGY DEVICES

Section	Device
868.5340 ..	Nasal oxygen cannula.
868.5350 ..	Nasal oxygen catheter.
868.5620 ..	Breathing mouthpiece.
868.5675 ..	Rebreathing device.
868.5700 ..	Nonpowered oxygen tent.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 6 above.

TABLE 7.—CARDIOVASCULAR DEVICES

Section	Device
870.1875 ..	Stethoscope.

FDA is proposing to grant an exemption from the requirement of premarket notification for the device in Table 7 above. However, this proposed exemption is limited and would apply only to the mechanical stethoscope, the manual stethoscope, and the direct (acoustic) stethoscope.

TABLE 8.—DENTAL DEVICES

Section	Device
872.1500 ..	Gingival fluid measurer.
872.1820 ..	Dental X-Ray exposure alignment device.
872.3100 ..	Dental amalgamator.
872.3130 ..	Preformed anchor.
872.3165 ..	Precision attachment.
872.3240 ..	Dental burr.
872.3285 ..	Preformed clasp.
872.3330 ..	Preformed crown.
872.3350 ..	Gold or stainless steel cusp.
872.3360 ..	Preformed cusp.
872.3410 ..	Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive.
872.3450 ..	Ethylene oxide homopolymer and/or karaya adhesive.
872.3490 ..	Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.
872.3520 ..	OTC denture cleanser.
872.3530 ..	Mechanical dental cleaner.
872.3580 ..	Preformed gold denture tooth.
872.3670 ..	Resin impression tray material.
872.3740 ..	Retentive and splinting pin.
872.3810 ..	Root canal post.
872.3900 ..	Posterior artificial tooth with a metal insert.
872.3910 ..	Backing and facing for an artificial tooth.
872.4130 ..	Intraoral dental drill.
872.4535 ..	Dental diamond instrument.
872.4620 ..	Fiber optic dental light.
872.4730 ..	Dental injecting needle.
872.5410 ..	Orthodontic appliances and accessories.
872.5525 ..	Preformed tooth positioner.
872.5550 ..	Solid teething ring (CPSC regulates if no medical claims).
872.6030 ..	Oral cavity abrasive polishing agent.
872.6100 ..	Anesthetic warmer.
872.6140 ..	Articulation paper.
872.6250 ..	Dental chair and accessories.
872.6300 ..	Rubber dam and accessories.
872.6475 ..	Heat source for bleaching teeth.
872.6510 ..	Oral irrigation unit.
872.6640 ..	Dental operative unit and accessories.
872.6865 ..	Powered toothbrush.
872.6890 ..	Intraoral dental wax.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 8 above. The proposed exemption for the dental chair and accessories (§ 872.6250) is limited and would apply only to products not containing an operative unit. The proposed exemption for the rubber dam

and accessories (§ 872.6300) is also limited and would apply only to the accessories, i.e., the rubber dam clamp, the rubber dam frame and forceps for the clamp. Finally, the proposed exemption for the dental operative unit and accessories (§ 872.6640) is limited and would apply only to the accessories tray to the dental operative unit.

TABLE 9.—EAR, NOSE, AND THROAT DEVICES

Section	Device
874.3375 ..	Battery-powered artificial larynx.
874.4750 ..	Laryngostroboscope.
874.5220 ..	Ear, nose, and throat drug administration device.
874.5800 ..	External nasal splint.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 9 above.

TABLE 10.—GASTROENTEROLOGY-UROLOGY DEVICES

Section	Device
876.5970 ..	Hernia support.

FDA is proposing to grant an exemption from the requirement of premarket notification for the device in Table 10 above.

TABLE 11.—GENERAL AND PLASTIC SURGERY DEVICES

Section	Device
878.1800 ..	Speculum and accessories.
878.3750 ..	External prosthesis adhesive.
878.3800 ..	External aesthetic restoration prosthesis.
878.3900 ..	Inflatable extremity splint.
878.4100 ..	Organ bag.
878.4380 ..	Drape adhesive.
878.4440 ..	Eye pad.
878.4470 ..	Surgeon's gloving cream.
878.4635 ..	Ultraviolet lamp for tanning.
878.4660 ..	Skin marker.
878.4700 ..	Surgical microscope and accessories.
878.4730 ..	Surgical skin degreaser/adhesive solvent.
878.4800 ..	Manual surgical instrument for general use.
878.4930 ..	Suture retention device.
878.4950 ..	Manual operating table and accessories and manual operating chair and accessories.
878.5900 ..	Non-pneumatic tourniquet.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 11 above. However, the proposed exemption for the organ bag (§ 878.4100) is limited and would apply only to intestinal organ bags.

TABLE 12.—GENERAL HOSPITAL AND PERSONAL USE DEVICES

Section	Device
880.2400 ..	Bed patient monitor.
880.2720 ..	Patient scale.
880.5180 ..	Burn sheet.
880.5210 ..	Intravascular catheter securement device.
880.5240 ..	Medical adhesive tape and adhesive bandage.
880.5630 ..	Nipple shield.
880.5740 ..	Suction snakebite kit.
880.5780 ..	Medical support stocking
880.5950 ..	Umbilical occlusion device.
880.6060 ..	Medical disposable bedding.
880.6150 ..	Ultrasonic cleaner for medical instruments.
880.6190 ..	Mattress cover for medical purposes.
880.6900 ..	Hand-carried stretcher.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 12 above.

TABLE 13.—NEUROLOGICAL DEVICES

Section	Device
882.1430 ..	Electroencephalograph test signal generator.
882.1700 ..	Percussor.
882.1925 ..	Ultrasonic scanner calibration test block.
882.4030 ..	Skull plate anvil.
882.4125 ..	Neurosurgical chair.
882.4190 ..	Clip forming/cutting instrument.
882.4200 ..	Clip removal instrument.
882.4215 ..	Clip rack.
882.4440 ..	Neurosurgical headrest.
882.4500 ..	Cranioplasty material forming instrument.
882.4525 ..	Microsurgical instrument.
882.4535 ..	Nonpowered neurosurgical instrument.
882.4600 ..	Leukotome.
882.4900 ..	Skullplate screwdriver.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 13 above.

TABLE 14.—Ophthalmic Devices

Section	Device
886.1040 ..	Ocular esthesiometer.
886.1050 ..	Adaptometer (biophotometer).
886.1070 ..	Anomaloscope.
886.1090 ..	Haidlinger brush.
886.1140 ..	Ophthalmic chair.
886.1160 ..	Color vision plate illuminator.
886.1250 ..	Euthyscope.
886.1290 ..	Fixation device.
886.1340 ..	Haploscope.
886.1350 ..	Keratoscope.
886.1425 ..	Lens measuring instrument.
886.1430 ..	Ophthalmic contact lens radius measuring device.
886.1435 ..	Maxwell spot.
886.1450 ..	Corneal radius measuring device.
886.1660 ..	Gonioscopic prism.
886.1680 ..	Ophthalmic projector.
886.1690 ..	Pupillograph.
886.1700 ..	Pupillometer.
886.1810 ..	Tangent screen (campimeter).
886.1860 ..	Ophthalmic instrument stand.
886.1870 ..	Stereoscope.
886.1910 ..	Spectacle dissociation test system.
886.1945 ..	Transilluminator.
886.4250 ..	Ophthalmic electrolysis unit.
886.4350 ..	Manual ophthalmic surgical instrument.
886.4360 ..	Ocular surgery irrigation device.
886.4570 ..	Ophthalmic surgical marker.
886.4750 ..	Ophthalmic eye shield.
886.4855 ..	Ophthalmic instrument table.
886.5820 ..	Closed-circuit television reading system.
886.5840 ..	Magnifying spectacles.
886.5842 ..	Spectacle frame.
886.5844 ..	Prescription spectacle lens.
886.5850 ..	Sunglasses (nonprescription).
886.5900 ..	Electronic vision aid.
886.5915 ..	Optical vision aid.

FDA is proposing to grant exemption from the requirement of premarket notification for each of the devices in Table 14 above. The proposed exemption for the keratoscope (§ 886.1350) and for the corneal radius measuring device (§ 886.1450) is limited and does not include topographers. Additionally, the proposed exemption for the ophthalmic chair (§ 886.1140), keratoscope (§ 886.1350), pupillometer (§ 886.1700), tangent screen (§ 886.1810), ophthalmic instrument stand (§ 886.1860), stereoscope (§ 886.1870), spectacle dissociation test system (§ 886.1910), ophthalmic instrument table (§ 886.4855), and optical vision aid (§ 886.5915) would apply to alternating current (AC)-powered devices. The proposed exemption for nonprescription sunglasses (§ 886.5850) is limited and applies only to sunglasses which: (1) Transmit less than 1.0 percent UV–B radiation, (2) transmit less than 5.0 percent UV–A radiation, (3) meet impact resistance (21 CFR 801.410), (4) are made with nonflammable materials, and (5) limit claims to reduction of the risk of age-related cataracts, and/or photokeratitis. The proposed exemption for the euthyscope (§ 886.1250), transilluminator (§ 886.1945) and ophthalmic electrolysis unit (§ 886.4250) is limited and would apply

only to battery-powered devices (AC-powered devices are class II devices).

TABLE 15.—ORTHOPEDIC DEVICES

Section	Device
888.4200 ..	Cement dispenser.
888.4210 ..	Cement mixer for clinical use.
888.4230 ..	Cement ventilation tube.
888.4540 ..	Orthopedic manual surgical instrument.
888.5940 ..	Cast components.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 15 above.

TABLE 16.—PHYSICAL MEDICINE DEVICES

Section	Device
890.1175 ..	Electrode cable.
890.3100 ..	Mechanical chair.
890.3750 ..	Mechanical table.
890.3920 ..	Wheelchair component.
890.3940 ..	Wheelchair platform scale.
890.5765 ..	Pressure-applying device.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 16 above.

TABLE 17.—RADIOLOGY DEVICES

Section	Device
892.1130 ..	Nuclear whole body counter.
892.1350 ..	Nuclear scanning bed.
892.1640 ..	Radiographic film marking system.
892.5740 ..	Radionuclide teletherapy source.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 17 above. The proposed exemption for the nuclear scanning bed (§ 892.1350) is limited and would apply only if the device is labeled with weight limit, is used with planar scanning only, and is not for diagnostic X-ray use.

III. Environmental Impact

The agency has determined under 21 CFR 25.249(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a proposal on small entities. Because this proposal would reduce a regulatory burden by exempting manufacturers of devices subject to the rule from the requirements of premarket notification, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Request for Comments

Interested persons may, on or before October 19, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Parts 862, 868, 870, 872, 874, 876, 878, 880, 882, 888, and 890

Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892 be amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 862.2270 is amended by revising paragraph (b) to read as follows:

§ 862.2270 Thin-layer chromatography system for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. Particular components of TLC systems, i.e., the thin-layer chromatography apparatus, TLC atomizer, TLC developing tanks, and TLC ultraviolet light, are also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

3. Section 862.2310 is amended by revising paragraph (b) to read as follows:

§ 862.2310 Clinical sample concentrator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

4. Section 862.2320 is amended by revising paragraph (b) to read as follows:

§ 862.2320 Beta and gamma counter for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

5. Section 862.2485 is amended by revising paragraph (b) to read as follows:

§ 862.2485 Electrophoresis apparatus for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

6. Section 862.2720 is amended by revising paragraph (b) to read as follows:

§ 862.2720 Plasma oncometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

7. Section 862.2800 is amended by revising paragraph (b) to read as follows:

§ 862.2800 Refractometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

8. Section 862.2920 is amended by revising paragraph (b) to read as follows:

§ 862.2920 Plasma viscometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

9. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

10. Section 864.2280 is amended by revising paragraph (b) to read as follows:

§ 864.2280 Cultured animal and human cells.

* * * * *

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

11. Section 864.5350 is amended by revising paragraph (b) to read as follows:

§ 864.5350 Microsedimentation centrifuge.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

12. Section 864.7660 is amended by revising paragraph (b) to read as follows:

§ 864.7660 Leukocyte alkaline phosphatase test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

13. Section 864.7675 is amended by revising paragraph (b) to read as follows:

§ 864.7675 Leukocyte peroxidase test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

14. Section 864.7900 is amended by revising paragraph (b) to read as follows:

§ 864.7900 Thromboplastin generation test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

15. Section 864.8500 is amended by revising paragraph (b) to read as follows:

§ 864.8500 Lymphocyte separation medium.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

16. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

17. Section 866.5170 is amended by revising paragraph (b) to read as follows:

§ 866.5170 Breast milk immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

18. Section 866.5220 is amended by revising paragraph (b) to read as follows:

§ 866.5220 Cohn fraction II immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

19. Section 866.5230 is amended by revising paragraph (b) to read as follows:

§ 866.5230 Colostrum immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

20. Section 866.5360 is amended by revising paragraph (b) to read as follows:

§ 866.5360 Cohn fraction IV immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

21. Section 866.5370 is amended by revising paragraph (b) to read as follows:

§ 866.5370 Cohn fraction V immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

22. Section 866.5540 is amended by revising paragraph (b) to read as follows:

§ 866.5540 Immunoglobin G (Fd fragment specific) immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

23. Section 866.5570 is amended by revising paragraph (b) to read as follows:

§ 866.5570 Lactoferrin immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

24. Section 866.5700 is amended by revising paragraph (b) to read as follows:

§ 866.5700 Whole human plasma of serum immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 868—ANESTHESIOLOGY DEVICES

25. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

26. Section 868.5340 is amended by revising paragraph (b) to read as follows:

§ 868.5340 Nasal oxygen cannula.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

27. Section 868.5350 is amended by revising paragraph (b) to read as follows:

§ 868.5350 Nasal oxygen catheter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

28. Section 868.5620 is amended by revising paragraph (b) to read as follows:

§ 868.5620 Breathing mouthpiece.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

29. Section 868.5675 is amended by revising paragraph (b) to read as follows:

§ 868.5675 Rebreathing device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

30. Section 868.5700 is amended by revising paragraph (b) to read as follows:

§ 868.5700 Nonpowered oxygen tent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 870—CARDIOVASCULAR DEVICES

31. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

32. Section 870.1875 is amended by revising paragraph (a)(2) to read as follows:

§ 870.1875 Stethoscope.

(a) * * *

(2) *Classification.* Class I. The mechanical stethoscope, the manual stethoscope and the direct (acoustic) stethoscope are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

* * * * *

PART 872—DENTAL DEVICES

33. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

34. Section 872.1500 is amended by revising paragraph (b) to read as follows:

§ 872.1500 Gingival fluid measurer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

35. Section 872.1820 is amended by revising paragraph (b) to read as follows:

§ 872.1820 Dental X-ray exposure alignment device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

36. Section 872.3100 is amended by revising paragraph (b) to read as follows:

§ 872.3100 Dental amalgamator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

37. Section 872.3130 is amended by revising paragraph (b) to read as follows:

§ 872.3130 Preformed anchor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

38. Section 872.3165 is amended by revising paragraph (b) to read as follows:

§ 872.3165 Precision attachment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

39. Section 872.3240 is amended by revising paragraph (b) to read as follows:

§ 872.3240 Dental bur.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807.

40. Section 872.3285 is amended by revising paragraph (b) to read as follows:

§ 872.3285 Preformed clasp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

41. Section 872.3330 is amended by revising paragraph (b) to read as follows:

§ 872.3330 Preformed crown.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

42. Section 872.3350 is amended by revising paragraph (b) to read as follows:

§ 872.3350 Gold or stainless steel cusp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

43. Section 872.3360 is amended by revising paragraph (b) to read as follows:

§ 872.3360 Preformed cusp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

44. Section 872.3410 is amended by revising paragraph (b) to read as follows:

§ 872.3410 Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

45. Section 872.3450 is amended by revising paragraph (b) to read as follows:

§ 872.3450 Ethylene oxide homopolymer and/or karaya adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

46. Section 872.3490 is amended by revising paragraph (b) to read as follows:

§ 872.3490 Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

47. Section 872.3520 is amended by revising paragraph (b) to read as follows:

§ 872.3520 OTC denture cleanser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

48. Section 872.3530 is amended by revising paragraph (b) to read as follows:

§ 872.3530 Mechanical dental cleaner.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

49. Section 872.3580 is amended by revising paragraph (b) to read as follows:

§ 872.3580 Preformed gold denture tooth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

50. Section 872.3670 is amended by revising paragraph (b) to read as follows:

§ 872.3670 Resin impression tray material.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. Section 872.3740 is amended by revising paragraph (b) to read as follows:

§ 872.3740 Retentive and splinting pin.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

52. Section 872.3810 is amended by revising paragraph (b) to read as follows:

§ 872.3810 Root canal post.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

53. Section 872.3900 is amended by revising paragraph (b) to read as follows:

§ 872.3900 Posterior artificial tooth with a metal insert.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

54. Section 872.3910 is amended by revising paragraph (b) to read as follows:

§ 872.3910 Backing and facing for an artificial tooth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

55. Section 872.4130 is amended by revising paragraph (b) to read as follows:

§ 872.4130 Intraoral dental drill.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

56. Section 872.4535 is amended by revising paragraph (b) to read as follows:

§ 872.4535 Dental diamond instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

57. Section 872.4620 is amended by revising paragraph (b) to read as follows:

§ 872.4620 Fiber optic dental light.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

58. Section 872.4730 is amended by revising paragraph (b) to read as follows:

§ 872.4730 Dental injecting needle.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

59. Section 872.5410 is amended by revising paragraph (b) to read as follows:

§ 872.5410 Orthodontic appliance and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

60. Section 872.5525 is amended by revising paragraph (b) to read as follows:

§ 872.5525 Preformed tooth positioner.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

61. Section 872.5550 is amended by revising paragraph (b)(1) to read as follows:

§ 872.5550 Teething ring.

* * * * *

(b)(1) *Classification.* Class I if the teething ring does not contain a fluid, such as water. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

* * * * *

62. Section 872.6030 is amended by revising paragraph (b) to read as follows:

§ 872.6030 Oral cavity abrasive polishing agent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

63. Section 872.6100 is amended by revising paragraph (b) to read as follows:

§ 872.6100 Anesthetic warmer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

64. Section 872.6140 is amended by revising paragraph (b) to read as follows:

§ 872.6140 Articulation paper.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

65. Section 872.6250 is amended by revising paragraph (b) to read as follows:

§ 872.6250 Dental chair and accessories.

* * * * *

(b) *Classification.* Class I. The dental chair without the operative unit device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

66. Section 872.6300 is amended by revising paragraph (b) to read as follows:

§ 872.6300 Rubber dam and accessories.

* * * * *

(b) *Classification.* Class I. The accessories to the device, i.e., rubber

dam clamp, rubber dam frame and forceps for a rubber dam clamp, are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

67. Section 872.6475 is amended by revising paragraph (b) to read as follows:

§ 872.6475 Heat source for bleaching teeth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

68. Section 872.6510 is amended by revising paragraph (b) to read as follows:

§ 872.6510 Oral irrigation unit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

69. Section 872.6640 is amended by revising paragraph (b) to read as follows:

§ 872.6640 Dental operative unit and accessories.

* * * * *

(b) *Classification.* Class I. The accessories tray to the dental operative unit is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

70. Section 872.6865 is amended by revising paragraph (b) to read as follows:

§ 872.6865 Powered toothbrush.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

71. Section 872.6890 is amended by revising paragraph (b) to read as follows:

§ 872.6890 Intraoral dental wax.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 874—EAR, NOSE, AND THROAT DEVICES

72. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

73. Section 874.3375 is amended by revising paragraph (b) to read as follows:

§ 874.3375 Battery-powered artificial larynx.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

74. Section 874.4750 is amended by revising paragraph (b) to read as follows:

§ 874.4750 Laryngostroboscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

75. Section 874.5220 is amended by revising paragraph (b) to read as follows:

§ 874.5220 Ear, nose, and throat drug administration device.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

76. Section 874.5800 is amended by revising paragraph (b) to read as follows:

§ 874.5800 External nasal splint.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

77. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

78. Section 876.5970 is amended by revising paragraph (b) to read as follows:

§ 876.5970 Hernia support.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

79. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 3601, 371).

80. Section 878.1800 is amended by revising paragraph (b) to read as follows:

§ 878.1800 Speculum and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

81. Section 878.3750 is amended by revising paragraph (b) to read as follows:

§ 878.3750 External prosthesis adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

82. Section 878.3800 is amended by revising paragraph (b) to read as follows:

§ 878.3800 External aesthetic restoration prosthesis.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is intended for use without an external prosthesis adhesive to fasten it to the body, the device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

83. Section 878.3900 is amended by revising paragraph (b) to read as follows:

§ 878.3900 Inflatable extremity splint.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

84. Section 878.4100 is amended by revising paragraph (b) to read as follows:

§ 878.4100 Organ bag.

* * * * *

(b) *Classification.* Class I. The intestinal organ bag device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

85. Section 878.4380 is amended by revising paragraph (b) to read as follows:

§ 878.4380 Drape adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

86. Section 878.4440 is amended by revising paragraph (b) to read as follows:

§ 878.4440 Eye pad.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

87. Section 878.4470 is amended by revising paragraph (b) to read as follows:

§ 878.4470 Surgeon's gloving cream.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

88. Section 878.4635 is amended by revising paragraph (b) to read as follows:

§ 878.4635 Ultraviolet lamp for tanning.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

89. Section 878.4660 is amended by revising paragraph (b) to read as follows:

§ 878.4660 Skin marker.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

90. Section 878.4700 is amended by revising paragraph (b) to read as follows:

§ 878.4700 Surgical microscope and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

91. Section 878.4730 is amended by revising paragraph (b) to read as follows:

§ 878.4730 Surgical skin degreaser or adhesive tape solvent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

92. Section 878.4800 is amended by revising paragraph (b) to read as follows:

§ 878.4800 Manual surgical instrument for general use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

93. Section 878.4930 is amended by revising paragraph (b) to read as follows:

§ 878.4930 Suture retention device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

94. Section 878.4950 is amended by revising paragraph (b) to read as follows:

§ 878.4950 Manual operating table and accessories and manual operating chair and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

95. Section 878.5900 is amended by revising paragraph (b) to read as follows:

§ 878.5900 Nonpneumatic tourniquet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

96. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

97. Section 880.2400 is amended by revising paragraph (b) to read as follows:

§ 880.2400 Bed-patient monitor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

98. Section 880.2720 is amended by revising paragraph (b)(1) to read as follows:

§ 880.2720 Patient scale.

* * * * *

(b) *Classification.* (1) Class I for a mechanical or battery powered patient scale. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

99. Section 880.5180 is amended by revising paragraph (b) to read as follows:

§ 880.5180 Burn sheet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

100. Section 880.5210 is amended by revising paragraph (b) to read as follows:

§ 880.5210 Intravascular catheter securement device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

101. Section 880.5240 is amended by revising paragraph (b) to read as follows:

§ 880.5240 Medical adhesive tape and adhesive bandage.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

102. Section 880.5630 is amended by revising paragraph (b) to read as follows:

§ 880.5630 Nipple shield.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

103. Section 880.5740 is amended by revising paragraph (b) to read as follows:

§ 880.5740 Suction snakebite kit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

104. Section 880.5780 is amended by revising paragraph (b)(2) to read as follows:

§ 880.5780 Medical support stocking.

* * * * *

(b) * * *

(2) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

105. Section 880.5950 is amended by revising paragraph (b) to read as follows:

§ 880.5950 Umbilical occlusion device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

106. Section 880.6060 is amended by revising paragraph (b) to read as follows:

§ 880.6060 Medical disposable bedding.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

107. Section 880.6150 is amended by revising paragraph (b) to read as follows:

§ 880.6150 Ultrasonic cleaner for medical instruments.

* * * * *

(b) *Classification.* Class I. The device, including any solutions intended for use with the device for cleaning and sanitizing the instruments, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

108. Section 880.6190 is amended by revising paragraph (b) to read as follows:

§ 880.6190 Mattress cover for medical purposes.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

109. Section 880.6900 is amended by revising paragraph (b) to read as follows:

§ 880.6900 Hand-carried stretcher.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 882—NEUROLOGICAL DEVICES

110. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

111. Section 882.1430 is amended by revising paragraph (b) to read as follows:

§ 882.1430 Electroencephalograph test signal generator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

112. Section 882.1700 is amended by revising paragraph (b) to read as follows:

§ 882.1700 Percussor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

113. Section 882.1925 is amended by revising paragraph (b) to read as follows:

§ 882.1925 Ultrasonic scanner calibration test block.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

114. Section 882.4030 is amended by revising paragraph (b) to read as follows:

§ 882.4030 Skull plate anvil.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

115. Section 882.4125 is amended by revising paragraph (b) to read as follows:

§ 882.4125 Neurosurgical chair.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

116. Section 882.4190 is amended by revising paragraph (b) to read as follows:

§ 882.4190 Clip forming/cutting instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

117. Section 882.4200 is amended by revising paragraph (b) to read as follows:

§ 882.4200 Clip removal instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

118. Section 882.4215 is amended by revising paragraph (b) to read as follows:

§ 882.4215 Clip rack.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

119. Section 882.4440 is amended by revising paragraph (b) to read as follows:

§ 882.4440 Neurosurgical headrest.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

120. Section 882.4500 is amended by revising paragraph (b) to read as follows:

§ 882.4500 Cranioplasty material forming instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

121. Section 882.4525 is amended by revising paragraph (b) to read as follows:

§ 882.4525 Microsurgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

122. Section 882.4535 is amended by revising paragraph (b) to read as follows:

§ 882.4535 Nonpowered neurosurgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

123. Section 882.4600 is amended by revising paragraph (b) to read as follows:

§ 882.4600 Leukotome.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in subpart E of part 807 of this chapter.

124. Section 882.4900 is amended by revising paragraph (b) to read as follows:

§ 882.4900 Skullplate screwdriver.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 886—OPHTHALMIC DEVICES

125. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

126. Section 886.1040 is amended by revising paragraph (b) to read as follows:

§ 886.1040 Ocular esthesiometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

127. Section 886.1050 is amended by revising paragraph (b) to read as follows:

§ 886.1050 Adaptometer (biophotometer).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

128. Section 886.1070 is amended by revising paragraph (b) to read as follows:

§ 886.1070 Anomaloscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

129. Section 886.1090 is amended by revising paragraph (b) to read as follows:

§ 886.1090 Haidlinger brush.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

130. Section 886.1140 is amended by revising paragraph (b) to read as follows:

§ 886.1140 Ophthalmic chair.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

131. Section 886.1160 is amended by revising paragraph (b) to read as follows:

§ 886.1160 Color vision plate illuminator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

132. Section 886.1250 is amended by revising paragraph (b) to read as follows:

§ 886.1250 Euthyscope.

* * * * *

(b) *Classification.* Class I for the battery powered device. The battery powered device is exempt from premarket notification procedures in subpart E of part 807 of this chapter. Class II for the AC-powered device.

133. Section 886.1290 is amended by revising paragraph (b) to read as follows:

§ 886.1290 Fixation device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

134. Section 886.1340 is amended by revising paragraph (b) to read as follows:

§ 886.1340 Haploscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

135. Section 886.1350 is amended by revising paragraph (b) to read as follows:

§ 886.1350 Keratoscope.

* * * * *

(b) *Classification.* Class I. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device does not include computer software in the unit or topographers. The battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

136. Section 886.1425 is amended by revising paragraph (b) to read as follows:

§ 886.1425 Lens measuring instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

137. Section 886.1430 is amended by revising paragraph (b) to read as follows:

§ 886.1430 Ophthalmic contact lens radius measuring device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

138. Section 886.1435 is amended by revising paragraph (b) to read as follows:

§ 886.1435 Maxwell spot.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

139. Section 886.1450 is amended by revising paragraph (b) to read as follows:

§ 886.1450 Corneal radius measuring device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device does not include computer software in the unit or topographers.

140. Section 886.1660 is amended by revising paragraph (b) to read as follows:

§ 886.1660 Gonioscopic prism.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

141. Section 886.1680 is amended by revising paragraph (b) to read as follows:

§ 886.1680 Ophthalmic projector.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

142. Section 886.1690 is amended by revising paragraph (b) to read as follows:

§ 886.1690 Pupillograph.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

143. Section 886.1700 is amended by revising paragraph (b) to read as follows:

§ 886.1700 Pupillometer.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual

device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

144. Section 886.1810 is amended by revising paragraph (b) to read as follows:

§ 886.1810 Tangent screen (campimeter).

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

145. Section 886.1860 is amended by revising paragraph (b) to read as follows:

§ 886.1860 Ophthalmic instrument stand.

(b) *Classification.* Class I. The AC-powered device and the battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

146. Section 886.1870 is amended by revising paragraph (b) to read as follows:

§ 886.1870 Stereoscope.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

147. Section 886.1910 is amended by revising paragraph (b) to read as follows:

§ 886.1910 Spectacle dissociation test system.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

148. Section 886.1945 is amended by revising paragraph (b) to read as follows:

§ 886.1945 Transilluminator.

* * * * *

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery-powered Class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

149. Section 886.4250 is amended by revising paragraph (b) to read as follows:

§ 886.4250 Ophthalmic electrolysis unit.

* * * * *

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery-powered Class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

150. Section 886.4350 is amended by revising paragraph (b) to read as follows:

§ 886.4350 Manual ophthalmic surgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

151. Section 886.4360 is amended by revising paragraph (b) to read as follows:

§ 886.4360 Ocular surgery irrigation device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

152. Section 886.4570 is amended by revising paragraph (b) to read as follows:

§ 886.4570 Ophthalmic surgical marker.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

153. Section 886.4750 is amended by revising paragraph (b) to read as follows:

§ 886.4750 Ophthalmic eye shield.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device also is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

154. Section 886.4855 is amended by revising paragraph (b) to read as follows:

§ 886.4855 Ophthalmic instrument table.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

155. Section 886.5820 is amended by revising paragraph (b) to read as follows:

§ 886.5820 Closed-circuit television reading system.

* * * * *

(b) *Classification.* Class I. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

156. Section 886.5840 is amended by revising paragraph (b) to read as follows:

§ 886.5840 Magnifying spectacles.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

157. Section 886.5842 is amended by revising paragraph (b) to read as follows:

§ 886.5842 Spectacle frame.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

158. Section 886.5844 is amended by revising paragraph (b) to read as follows:

§ 886.5844 Prescription spectacle lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

159. Section 886.5850 is amended by revising paragraph (b) to read as follows:

§ 886.5850 Sunglasses (nonprescription).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter and the exemption applies only to sunglasses which:

(1) Transmit less than 1.0 percent UV-B radiation;
(2) Transmit less than 5.0 percent UV-A radiation;
(3) Meet impact resistance (21 CFR 801.410);
(4) Use nonflammable materials; and
(5) Limit claims to reduction of the risk age-related cataracts and/or photokeratitis.

160. Section 886.5900 is amended by revising paragraph (b) to read as follows:

§ 886.5900 Electronic vision aid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

161. Section 886.5915 is amended by revising paragraph (b) to read as follows:

§ 886.5915 Optical vision aid.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 888—ORTHOPEDIC DEVICES

162. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

163. Section 888.4200 is amended by revising paragraph (b) to read as follows:

§ 888.4200 Cement dispenser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

164. Section 888.4210 is amended by revising paragraph (b) to read as follows:

§ 888.4210 Cement mixer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

165. Section 888.4230 is amended by revising paragraph (b) to read as follows:

§ 888.4230 Cement ventilation tube.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

166. Section 888.4540 is amended by revising paragraph (b) to read as follows:

§ 888.4540 Orthopedic manual surgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

167. Section 888.5940 is amended by revising paragraph (b) to read as follows:

§ 888.5940 Cast component.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

PART 890—PHYSICAL MEDICINE DEVICES

168. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

169. Section 890.1175 is amended by revising paragraph (b) to read as follows:

§ 890.1175 Electrode cable.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The devices are also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

170. Section 890.3100 is amended by revising paragraph (b) to read as follows:

§ 890.3100 Mechanical chair.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

171. Section 890.3750 is amended by revising paragraph (b) to read as follows:

§ 890.3750 Mechanical table.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

172. Section 890.3920 is amended by revising paragraph (b) to read as follows:

§ 890.3920 Wheelchair component.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

173. Section 890.3940 is amended by revising paragraph (b) to read as follows.

§ 890.3940 Wheelchair platform scale.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

174. Section 890.5765 is amended by revising paragraph (b) to read as follows:

§ 890.5765 Pressure-applying device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 892—RADIOLOGY DEVICES

175. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

176. Section 892.1130 is amended by revising paragraph (b) to read as follows:

§ 892.1130 Nuclear whole body counter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

177. Section 892.1350 is amended by revising paragraph (b) to read as follows:

§ 892.1350 Nuclear scanning bed.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device is labeled with weight limit, is used with planar scanning only, and is not for diagnostic X-ray use.

178. Section 892.1640 is amended by revising paragraph (b) to read as follows:

§ 892.1640 Radiographic film marking system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

179. Section 892.5740 is amended by revising paragraph (b) to read as follows:

§ 892.5740 Radionuclide teletherapy source.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: July 15, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17705 Filed 7–18–94; 11:43 am]

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federal register

Thursday
July 21, 1994

Part VII

The President

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

Presidential Documents

Title 3—

The President

Proclamation 6707 of July 19, 1994

National Apollo Anniversary Observance

By the President of the United States of America

A Proclamation

When John F. Kennedy called upon our Nation to join him in a journey to the unknown frontier of space, Americans eagerly accepted the challenge. Propelled by the fire that President Kennedy sparked in our imaginations, the pioneering scientists of our country's emerging space program sent the Apollo 11 astronauts on the greatest adventure humankind has ever known. As the first extraordinary images of the moon's surface were transmitted to Earth for all to see, we began to recognize, as never before, how far the human race had traveled—and how far we have yet to go.

Today, more than 30 years after President Kennedy's historic vision, America's gaze remains drawn to the heavens. Space exploration has become an integral part of our national character, capturing the spirit of optimism and adventure that has defined this country from its beginnings.

On this 25th anniversary of the historic Apollo mission to the moon, our tradition of bold discovery compels us to embrace the opportunities of the dawning 21st century. Although ours is a very different world than that of the 1960s—one of tightening resources and expanding international competition—our determination to meet the future with courage guides us still.

By advancing a program in robotic exploration using smaller, less costly spacecraft, we can further expand our understanding of the origins of our solar system and of the universe beyond it. By renewing our commitment to human space flight in concert with other nations, we can strengthen the bonds of international friendship, while fostering the technological development that holds the key to long-term economic growth. By investing in space transportation, we will ensure affordable access to space for our posterity. By supporting the communications and navigational systems that have maintained our Nation's security, we help to promote stability around the globe. By completing our "Mission to Planet Earth," we will gain unique insight into our planet's dynamic environment. We have one chance to keep our covenant with the generations to come—safeguarding the thin blue shield that sustains all of Earth's inhabitants.

For when our children see tomorrow's satellite image of our world from space, these are the visions we want them to see—visions of communication and cooperation, visions of permanence and peace. We must empower our young people to venture farther into the limitless frontier of space. We must encourage them to recognize the vast possibilities of science and mathematics, instilling in their generation the same faith in self that enabled explorers of our generation to stand on the soil of another world. Today's children do not, of course, remember the way the world held its breath as Neil Armstrong took his "one small step." But they do see the magic and enjoy the benefits of that journey every day, from the computers they use in schools to the electronic highways that connect them to friends around the world.

As we celebrate this important anniversary, our eyes again turn to the horizon. We look to the future of new technologies that we may better provide for our people. We look to the atmospheres of distant worlds that we may better protect the life's breath of our own fragile planet. We aim toward the farthest reaches of our universe that we may better understand ourselves. These are the challenges that await us. Today, let us chart a course to meet them.

In recognition of our achievements, the Congress, by Senate Joint Resolution 187, has designated July 16 through July 24, 1994, as "National Apollo Anniversary Observance," and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 16 through July 24, 1994, as National Apollo Anniversary Observance to be celebrated with appropriate ceremonies and activities. I also call upon the people of the United States to observe this occasion by honoring the Apollo 11 mission and all of the men and women who have served in our Nation's space program.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of July, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94–1798]
Filed 7–20–94; 10:29 am]
Billing code 3195–01–P

Editorial note: For the President's remarks commemorating the twenty-fifth anniversary of the Apollo 11 mission, see issue 29 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Presidential Determination No. 94–34 of July 15, 1994

Determination To Authorize the Furnishing of Emergency Military Assistance to the Dominican Republic Under the Foreign Assistance Act of 1961

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists, which requires immediate military assistance to the Dominican Republic; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $15 million in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training to the Dominican Republic.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 15, 1994.

[FR Doc. 94–17995
Filed 7–20–94; 11:14 am]
Billing code 4710–10–M

Editorial note: The White House sent to the Office of the Federal Register a corrected version of Presidential Determination 94–34 of July 15, 1994. Publication of this corrected version supersedes the earlier version published in the **Federal Register** on July 20, 1994, at 59 FR 37149.

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Thursday, July 21, 1994

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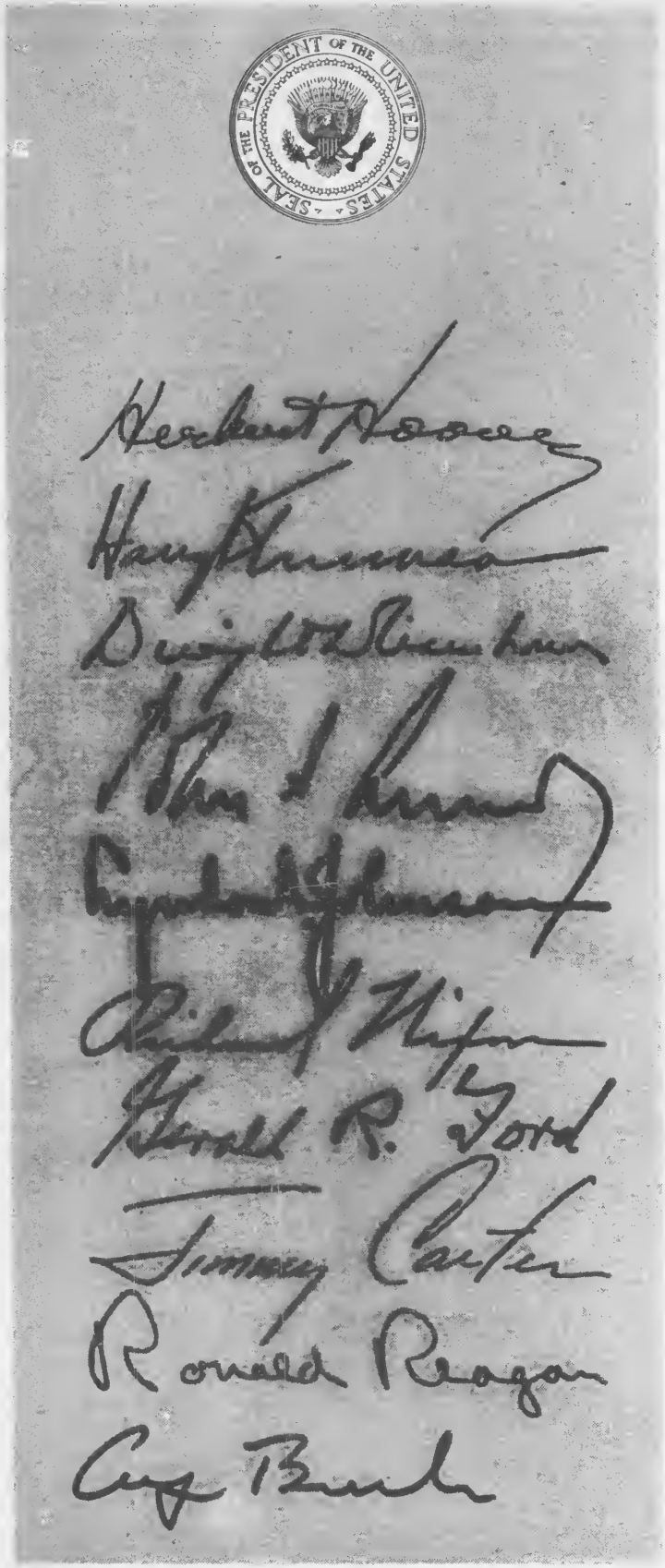

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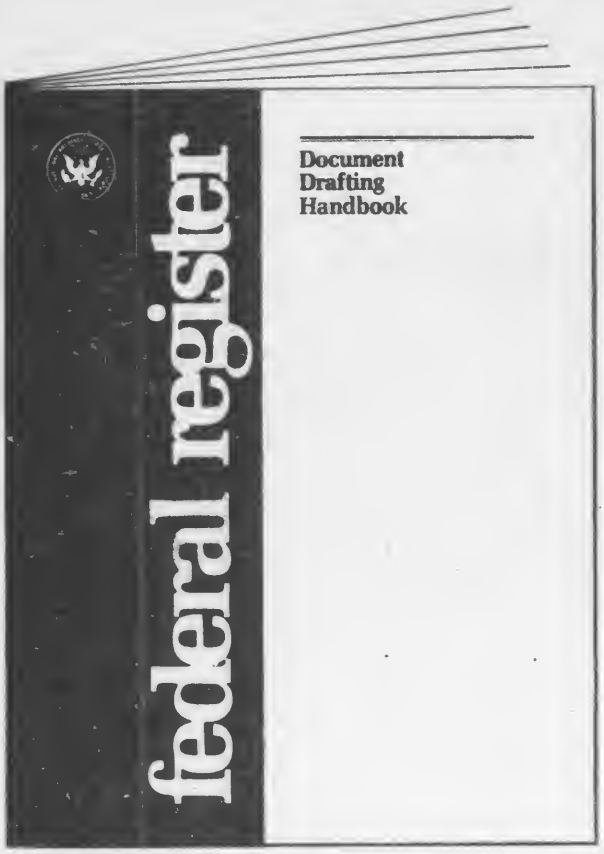

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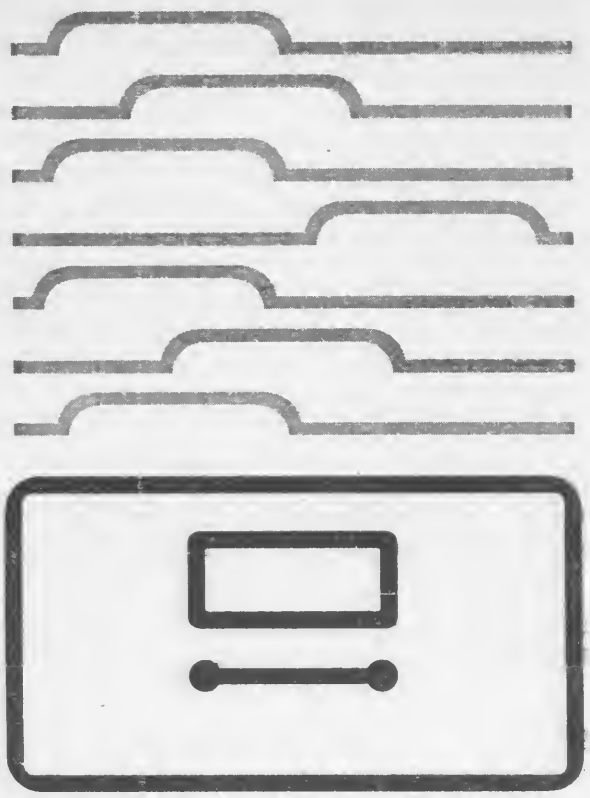

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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