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WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: November 21 at 9:00 am and 1:30 pm
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

NEW YORK, NY

WHEN: December 13, 9:30 am–12:30 pm
WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV94–905–4–IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes the minimum size requirement for domestic shipments of Florida red seedless grapefruit and for red seedless grapefruit imported into the United States to 3$^{5}/_{16}$ inches in diameter (size 56) through November 12, 1995. Unless relaxed, the minimum size requirement will increase under current requirements to 3$^{9}/_{16}$ inches in diameter (size 48) on November 7, 1994. This rule enables handlers in Florida and importers to continue to ship size 56 red seedless grapefruit for the entire 1994–95 season.

DATES: Effective November 7, 1994; comments received by December 8, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770; or Mark Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: 202–720–1755.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905 (7 CFR Part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order". This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under Marketing Order No. 905.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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

There are approximately 110 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, about 11,970 producers of these citrus fruits in Florida, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, have been defined by the Small Business Administration (13 CFR

121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers, importers, and producers may be classified as small entities.

The order for Florida citrus provides for the establishment of minimum grade and size requirements. The minimum grade and size requirements are designated to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

The Citrus Administrative Committee (committee), which administers the order locally, makes recommendations to the Secretary of Agriculture as to the grade and size of fruit that should garner consumer acceptance. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The committee met September 13, 1994, and unanimously recommended that the minimum size requirement for domestic shipments of fresh red seedless grapefruit be relaxed from size 48 to size 56 for the period November 7, 1994, to November 12, 1995. Size 56 (3$^{5}/_{16}$ inches diameter) is the minimum size until November 6, 1994. At that time, absent this revision of the rules and regulations under the order, the minimum size will revert to size 48 (3$^{9}/_{16}$ inches diameter).

Section 905.52, Issuance of regulations, authorizes the committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). Export requirements are not changed by this rule.

In making its recommendation, the committee considered estimated supply and current shipments. The committee reports that it expects that fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1994–95 season.

The committee recommended this relaxation in size to enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This is consistent with current and anticipated demand in those markets for the 1994–95 season, and will provide for the maximization of shipments to fresh market channels.

There are several exemption provisions under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale under these provisions. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This rule reflects the committee's and the Department's appraisal of the need to relax the minimum size requirement for red seedless grapefruit as specified. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs consistent with this season's crop and market conditions.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

This rule relaxes the minimum size requirements for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) for the period November 7, 1994, through November 12, 1995, to reflect the relaxation being made under the order for grapefruit grown in Florida.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

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

After consideration of all relevant material presented, including the committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) This rule relaxes the minimum size requirement currently in effect for red seedless grapefruit grown in Florida and red seedless grapefruit imported into the United States;

(2) Florida grapefruit handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed size requirement;

(3) shipment of the 1994–95 season Florida red seedless grapefruit crop is expected to be well underway by November 7, 1994; and

(4) the rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 905

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

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR Parts 905 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

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

2. Section 905.306 is amended by revising the entries in Table I of

paragraph (a) for seedless, red grapefruit to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety (1)	Regulation Period (2)	Minimum Grade (3)	Minimum Diameter (Inches) (4)
* * * * * * *			
Grapefruit.			
* * * * * * *			
Seedless, red	11/07/94–11/12/95	Improved No. 2 External U.S. No. 1 Internal.	3 5/16
	On and after 11/13/95	Improved No. 2 External U.S. No. 1 Internal.	3 9/16
* * * * *			

PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.106 is amended by revising paragraph (a) to read as follows:

§ 944.106 Grapefruit import regulation.

(a) Pursuant to section 8e [7 U.S.C. Section 608e-1] of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and Part 944—Fruits; Import Regulations, the importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
Seeded	On and after 07/26/93	U.S. No. 1	3 12/16
Seedless, red	11/07/94–11/12/95	Improved No. 2 External U.S. No. 1 Internal.	3 5/16
	On and after 11/13/95	Improved No. 2 External U.S. No. 1 Internal.	3 9/16
Seedless, except red	On and after 07/26/93	Improved No. 2 External U.S. No. 1 Internal.	3 9/16

* * * * *

Dated: November 4, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27752 Filed 11–4–94; 2:27 pm]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release Nos. 35–26153; IC–20675; International Series Release No. 740; File No. S7–32–94]

Request for Comments on Modernization of the Regulation of Public-Utility Holding Companies

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Concept release; request for comments.

SUMMARY: The Commission is soliciting comments on modernization of the regulation of public-utility holding companies under the Public Utility Holding Company Act of 1935. Developments in recent years require reexamination of the need for, and role of, a federal holding company statute. Accordingly, the Commission is requesting comment on a number of specific issues summarized in this release, and generally on any other issues that commenters believe relevant to the regulation of public-utility holding companies.

DATES: Comments are to be received on or before February 6, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–32–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, Office of Legal & Policy Analysis, Martha Cathey Baker, Assistant Director, Office of Applications, Robert P. Wason, Chief Financial Analyst, Office of Public Utility Regulation, or C. Hunter Jones, Special Counsel, Office of the General Counsel, all at (202) 942–0545.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is soliciting comments in connection with a comprehensive study ("Study") of

regulation under the Public Utility Holding Company Act of 1935 ("Holding Company Act" or "Act"). The Holding Company Act was complex and far-reaching New Deal legislation, enacted by Congress to eliminate abuses that had plagued the U.S. electric and gas utility industry and threatened the interests of investors and consumers. The public-utility holding companies subject to this statute operate across the United States, serving a vast number of utility consumers.[1] Although in the past sixty years there have been fundamental changes in the industry, as well as significant legal and regulatory developments, the Holding Company Act has remained largely unchanged.

The Commission is undertaking a thorough evaluation of the Act, to review the regulatory framework in light of developments in recent years and to consider how federal regulation of utility holding companies can best serve the interests of investors, consumers, and the general public in the years to come. The Commission inaugurated the Study with a roundtable discussion, in Washington, D.C. on July 18 and 19, 1994 ("Roundtable"), in which representatives of the utility industry, consumer groups, trade associations, investment banks, rating agencies, economists, state, local and federal regulators, and others participated.[2]

The participants discussed a number of issues facing the industry today. They noted that deregulation and increased competition have created risks, as well as potential benefits, for public utilities. Many participants stated that utilities are experiencing little or no earnings growth in their core utility business. A number of possible responses, including reorganization of the industry along functional lines, diversification, and investment in foreign projects, were mentioned. Although the participants had widely divergent views on the future of the Act, all agreed that the statute poses some impediments to change. Recommendations ranged from selective reform of the Act to outright repeal.

Those favoring repeal have argued that the Act is redundant or outmoded as a result of changes in the industry, the capital markets, accounting standards, state and other federal regulation, and the disclosure required under other federal securities laws. Although the Commission has previously supported proposals to repeal or transfer administration of the Act,[3] these proposals have not succeeded. Commenters who favor continued efforts for repeal should describe in particular the protections that would be afforded consumers by state and other federal law, in the absence of a Holding Company Act.

At the Roundtable, Commissioner Richard Y. Roberts expressed the view, and the Commission concurs, that the most valuable contributions to the Study may consist of concrete proposals for reforms on which it is likely that the industry, the regulators and other interested parties can agree.[4] The objective of such proposals would be to modernize and simplify regulation, reduce the delay inherent in the current administration of the Act, and minimize regulatory overlap, while protecting the interests of consumers and investors.

As a point of departure, the existing regulatory framework is summarized below. Also identified are a number of specific topics on which the Commission is seeking comment. Commenters are encouraged to address the overall regulatory structure for public-utility holding companies, and to consider the appropriate role of a federal holding company statute, particularly in view of the work of the Federal Energy Regulatory Commission ("FERC") and state and local regulators. In addition, commenters are urged to address any general topics or issues that they believe merit examination in the Commission's study of holding company regulation.

The Commission requests that commenters provide specific statutory or rulemaking language, where possible, to implement their recommendations. It may also be helpful to compare the costs and benefits of various proposals, to companies as well as to consumers and investors. In addition, if commenters argue that regulatory or market protections outside the Holding Company Act suffice to protect investors and consumers on a particular issue, they should describe the operation of these other safeguards.

II. The Existing Regulatory Structure

A. Background: Passage of the Holding Company Act

The Holding Company Act[5] was intended to address the practices by which small groups of investors, by means of the holding company structure, were able to exploit vast networks of utility companies, to the detriment of utility consumers and other security holders. The specific problems identified by Congress included inadequate disclosure, excessive leverage, abusive affiliate transactions, use of the holding company to evade state regulation, and the growth and extension of holding companies without regard to the economy of management and operation of system utility companies.[6] These aggressive practices harmed investors who owned the securities of the utility companies and captive utility consumers who were forced to pay inflated rates for gas and electric energy.

The multistate character of the holding companies prevented effective control by state regulators. Holding company ownership shifted management and control from the operating utilities, which were subject to state regulation, to a parent company organized under the laws of another state and beyond the jurisdiction of utility regulators in any state. During the early years of this century, the federal government played a very limited role in the regulation of the utility industry.[7] At the time the Holding Company Act was passed, jurisdiction over holding companies consisted largely of nascent, indirect regulation under the Securities Act of 1933[8] and the Securities Exchange Act of 1934.[9]

Extensive studies that preceded the Act found "a number of almost inherent incidental abuses in the holding-company system which cannot be

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[1] At present, there are fourteen active registered holding companies and several hundred exempt holding companies.

[2] A transcript of the Roundtable discussion, which was open to the public, will soon be available for inspection and copying at the Commission's Public Reference Room in File No. S7–19–94.

[3] *See, e.g.*, Statement of the U.S. Securities and Exchange Commission Concerning Proposals to Amend or Repeal the Public Utility Holding Company Act of 1935 (June 2, 1982).

[4] Several commenters provided specific proposals for Commission consideration. *See, e.g.*, Comments by Joan T. Bok, Chairman, New England Electric System; Summary of Comments of Clinton Vince, Special Counsel to the Council of the City of New Orleans; Columbia Gas System, *Initial Comments on the Need for Legislative Reform* (Aug. 10, 1994) (available in Public Comment File No. S7–19–94).

[5] Pub. L. No. 74–333, 49 Stat. 803 (1935) (codified as amended at 15 U.S.C. 79a–79z–6). The Holding Company Act was enacted as Title I of the Public Utility Act of 1935. Title II amended the Federal Water Power Act of 1920 to create the Federal Power Act. *See* Pub. L. No. 74–333, 49 Stat. 838 (1935) (codified as amended at 16 U.S.C. 791a–828c).

[6] Holding Company Act section 1(b) (15 U.S.C. 79a(b)).

[7] The jurisdiction of the Federal Power Commission was then narrowly defined. Prior to 1935, most transactions involving interstate transmission of electricity were not regulated by the federal government. *See* Richard Lowitt, *Federal Power Commission*, In *Government Agencies* 233, 235 (Donald R. Whitnah ed., 1983). See *infra* section II.C.1. (discussing developments in federal energy regulation).

[8] Pub. L. No. 73–22, 48 Stat. 74 (1933) (codified as amended at 15 U.S.C. 77a *et seq.*).

[9] Pub. L. No. 73–290, 48 Stat. 881 (1934) (codified as amended at 15 U.S.C. 78a *et seq.*).

reached by direct regulation of the operating company," [10] and concluded that "[t]he only practical control over public-utility holding companies will be one which can directly reach the holding company itself and supervise its security structure and its use of capital * * *. Only in that way can Government protect the investors who supply that capital and the consumers who must bear its cost." [11]

The Holding Company Act was intended to curb the abusive practices of public-utility holding companies by bringing these companies under effective control.[12] Thus, the Commission, as the agency with expertise in financial transactions and corporate finance, was charged with regulation of the corporate structure and financings of public-utility holding companies and their affiliates.[13]

Any company that owns 10 percent or more of the outstanding voting securities of a public-utility company is presumptively a holding company for purposes of the Act.[14] The burden of regulation under the Act falls most heavily on holding companies that have significant interstate utility operations, and are thereby not readily susceptible to effective state regulation. These companies must register and comply with the myriad requirements of the Act.[15]

Section 11, which the Supreme Court has described as the "very heart" of the Act,[16] generally limits registered holding companies to a single integrated public-utility system and such other businesses as are "reasonably incidental, or economically necessary or appropriate" to the operations of that system.[17] Companies in a registered holding company system must obtain Commission approval for a wide range of transactions, including financings,[18] acquisitions,[19] and intrasystem transactions.[20] These companies are also subject to various accounting and reporting requirements.[21]

Although most public-utility holding companies are largely exempt from pervasive regulation under the Holding Company Act, they nonetheless remain subject to the requirement of prior Commission approval for utility acquisitions. In addition, the Commission may challenge the continued availability of an exemption under the "unless and except" clause of section 3.[22]

B. Legislative and Regulatory Developments Related to the Holding Company Act

The Commission's early administration of the Act was largely directed toward the reorganization of existing holding companies. By the 1950s, this work was largely completed.[23] Since then, the Commission has acted to ensure that the abuses that gave rise to the Act do not recur.[24]

Although the basic framework of the Act remains unchanged, Congress has created a number of statutory exceptions to the regulatory scheme. Beginning in the 1970s, Congress enacted the Public Utility Regulatory Policies Act of 1978 (PURPA)[25] to stimulate alternative energy production. To that end, PURPA granted "qualifying facilities" (QFs) significant regulatory advantages over traditional generating facilities. Among other things, most QFs are exempted from the Holding Company Act,[26] and a registered holding company can acquire interests in QFs that are unrelated to its core utility operations.[27] In addition, Congress enacted the Gas Related Activities Act of 1990 (GRAA), which permits gas registered holding companies to acquire significant production and transportation assets that do not directly serve the needs of their retail distribution systems.[28]

Congress accelerated the pace of change in the industry with the Energy Policy Act of 1992,[29] which enables companies to invest in "exempt wholesale generator" [30] and "foreign utility company" [31] operations throughout the United States and abroad. The Energy Policy Act represented the first major change in the pattern of regulation under the

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[10] *Summory Report of the Federal Trade Commission to the Senate, Utility Corporations*, S. Doc. No. 92, 70th Cong., 1st Sess., pt. 73–A, at 3 (1935) (in 101 volumes) ("For example, no matter how strict the regulation of an operating company, improper payments of dividends and of other items still can be made by the holding company out of surplus other than earned surplus. Excessive capital issues can be floated by the holding company, with an important indirect effect upon rates charged by the operating company to the public.").

[11] *Report of Notionol Power Policy Committee on Public-Utility Holding Companies*, S. Doc. No. 137, 74th Cong., 1st Sess. 8 (1935). *See olso SCEcorp*, Holding Co. Act Release No. 25564 (June 29, 1992), citing *Arkansos Louisiana Gas Co.*, 36 S.E.C. 121, 137 (1954) (the Act was intended to address "evils * * * which because of holding company action or control, cannot be effectively dealt with by other regulatory agencies").

[12] *Gulf States Utilities Co. v. FPC*, 411 U.S. 747, 758 (1973).

[13] At the same time, Congress amended the Federal Power Act to provide effective federal regulation of the expanding business of transmitting and selling electric power in interstate commerce. Congress entrusted the administration of this statute to the Federal Power Commission (now the Federal Energy Regulatory Commission), as the agency with the technical expertise necessary to regulate the transmission of energy. *See Arcodia v. Ohio Power Co.*, 498 U.S. 73, 87 (1990) (Stevens, J., concurring). The role of the FERC is discussed *infra* at section II.C.1.

[14] Holding Company Act section 2(a)(7)(A) (15 U.S.C. 79b(a)(7)(A)). For purposes of the Act, a public-utility company means either an electric or a gas utility company. Holding Company Act section 2(a)(5) (15 U.S.C. 79b(a)(5)). An electric utility company is broadly defined as any company that owns or controls assets used for the generation, transmission or distribution of electricity. Holding Company Act section 2(a)(3) (15 U.S.C. 79b(a)(3)). A gas utility company is more narrowly defined as any company that owns or controls assets used for the retail distribution of gas for heat, light or power. Holding Company Act section 2(a)(4) (15 U.S.C. 79b(a)(4)).

[15] Holding Company Act section 5 (15 U.S.C. 79e).

[16] *SEC v. New England Elec. System*, 384 U.S. 176, 180 (1966), *citing North American Co. v. SEC*, 327 U.S. 686, 704 n.14 (1946).

[17] Holding Company Act section 11(b)(1) (15 U.S.C. § 79k(b)(1)).

[18] Holding Company Act sections 6, 7 and 12 (15 U.S.C. §§ 79f, g and *l*).

[19] Holding Company Act sections 9 and 10 (15 U.S.C. §§ 79i and j).

[20] Holding Company Act section 13 (15 U.S.C. § 79m).

[21] *See* Holding Company Act sections 14 and 15 (15 U.S.C. § 79n and o) and rules thereunder.

[22] Section 3(a) of the Act (15 U.S.C. § 79c(a)) authorizes the Commission in certain circumstances to exempt any holding company and subsidiary company thereof from any provision of the Act, "unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers."

[23] *See* Statement of the U.S. Securities and Exchange Commission Concerning Proposals to Amend or Repeal the Public Utility Holding Company Act of 1935 (June 2, 1982).

[24] Section 1(c) of the Holding Company Act (15 U.S.C. 79a(c)) directs the Commission to administer all the provisions of the Act to prevent practices the Congress found detrimental to the interests of investors, consumers and the general public (the "protected interests" under the Act).

[25] Pub. L. No. 95–617, 92 Stat. 3117 (1978).

[26] Most qualifying facilities are deemed to be nonutilities for purposes of the Holding Company Act. *See* 18 CFR § 292.602.

[27] *See* Pub. L. No. 99–186, 99 Stat. 1180 (1985) (investments in cogeneration by registered gas systems); Pub. L. No. 99–553, 100 Stat. 3087 (1986) (investments by registered electric systems); Pub. L. No. 102–486, § 713, 106 Stat. 2776, 2911 (1992) (section 713 of Energy Policy Act of 1992, investments by registered holding companies in small power production).

[28] Pub. L. 101–572, 104 Stat. 2810 (1990). Gas production and transportation activities are nonutility businesses for purposes of the Holding Company Act. See Holding Company Act section 2(a)(4) (15 U.S.C. § 79b(a)(4)) ("gas utility company" includes only companies owning or controlling assets used for retail gas distribution).

[29] Pub. L. No. 102–486, 106 Stat. 2776 (1992).

[30] An exempt wholesale generator is any person determined by the FERC to be engaged exclusively in owning or operating facilities used for the generation of electricity for sale at wholesale. *See* Holding Company Act section 32(a)(1) (15 U.S.C. § 79z–5a(a)(1)); *see olso* Holding Company Act section 32(b) (15 U.S.C. § 79z–5a(b)) (permitting certain foreign retail sales).

[31] Briefly stated, any company can claim status as a foreign utility company by notifying the Commission that it owns or operates gas *or* electric utility facilities outside the United States. *See* Holding Company Act section 33(a)(3) (15 U.S.C. §§ 79z–5b(a)(3)) (such company cannot derive any utility income from within the United States, and cannot be, or have a subsidiary that is, a public-utility operating in the United States).

Holding Company Act. Congress did not dispense with the need for Commission approval of activities under PURPA and GRAA: Holding Company Act section 10(b)(3) continues to require that an acquisition not be detrimental to the public interest or the interests of investors or consumers. In contrast, the Energy Policy Act broadly exempts certain wholesale generators from all provisions of the Holding Company Act and expressly authorizes a registered holding company to acquire an exempt wholesale generator without the need for Commission approval. Congress sought to promote this type of diversification and made the Commission primarily responsible for protecting consumers of registered holding companies from any adverse effects of these new ventures. The Commission's authority in this area, however, is limited; the Commission can regulate investments in exempt wholesale generators only indirectly, through its jurisdiction over holding company financings and other related transactions. This hybrid regulation has proved troublesome, and the Commission has strongly recommended that Congress not duplicate the model developed under the Energy Policy Act.[32]

C. Other Regulatory Factors

1. FERC Regulation

The work of the Commission under the Holding Company Act was intended to complement the work of the Federal Power Commission (now the FERC) in the regulation of the electric and gas utility industry.

a. *Electricity.* The Holding Company Act was enacted as Title I of the Public Utility Act of 1935.[33] Title II of the legislation[34] gave the Federal Power Commission (FPC) broad authority over the transmission and sale of electricity in interstate commerce.

Congress's decision to entrust administration of the Holding Company Act to the SEC and administration of the Federal Power Act to the FPC reflected two differing goals. The Holding Company Act was intended to curb abusive practices of public-utility subsidiaries of holding companies by bringing them under effective control. The Federal Power Act was intended to provide effective federal regulation of the transmission and sale of electricity in interstate commerce.[35]

The primary focus in the administration of the Federal Power Act has been the protection of ratepayers against excessive electric rates.[36] Utilities must file wholesale rate schedules with the FERC, which may then suspend any rate increase for up to five months, order refunds for rates that it finds exceed a "just and reasonable" level, and prescribe rates to be charged prospectively.

Under the Public Utility Regulatory Policies Act, the FERC adopted rules concerning qualifying facilities. These rules require electric utilities to interconnect with QFs and to offer to purchase power from, and sell power to, QFs, and set the general standard for determining the rates for power sale transactions with QFs.[37]

Following the enactment of PURPA, other independent generators began to seek entry into bulk power markets. The FERC, which had traditionally required cost-based rates for electric power, began to permit market-based rates for nontraditional sellers that could not exercise market power, where there was no evidence of affiliate abuse or reciprocal dealing.[38] As traditional, investor-owned utilities began to seek market-based rates for their existing excess capacity, the FERC extended its market power analysis to these companies. In these matters, the FERC required that the utility mitigate its transmission market power by opening its transmission system to other wholesale sellers and buyers.[39] The FERC has also relied on open access transmission tariffs to mitigate the anticompetitive effects of proposed mergers.[40]

In the Energy Policy Act of 1992, Congress gave the FERC additional authority to promote competition in wholesale bulk power markets by ordering transmission,[41] if it finds that to do so is in the public interest and will not unreasonably impair the continued reliability of affected electric systems.[42] The FERC is also responsible for determining exempt wholesale

[32] *Hearings on Proposals to Lift the Current Diversificotion Restrictions on Telecommunications Activities of Registered Holding Companies Before the Subcomm. on Telecommunications ond Finance ond the Subcomm. on Energy ond Power of the House Comm. on Energy and Commerce,* 103d Cong., 2d Sess. (1994) (statement of Richard Y. Roberts, Commissioner, SEC).

Although the Commission has adopted rules 53 and 54 (17 CFR 250.53 and 54) that are intended to protect consumers and investors from any substantial adverse effect that may be associated with investments in exampt wholesale generators, these rules are currently the subject of litigation in the U.S. Court of Appeals for the District of Columbia Circuit. *NARUC* v. *SEC,* No. 93–1778 (D.C. Cir. filed Nov. 22, 1993). The Court of Appeals has been asked to consider the extent to which tha Commission must ansure the protection of consumers of registered holding companies from any detriment associated with investments in exempt wholesale generators.

The Commission is currently engaged in a related rulemaking with respect to investments in foraign utility companies. *See* Holding Co. Act Release No. 25757 (Mar. 8, 1993), 58 FR 13719 (Mar. 15, 1993) (notice of proposed rulemaking).

[33] Pub. L. No. 74–333, 49 Stat. 803 (1935).

[34] Pub. L. No. 74–333, 49 Stat. 838 (1935) (codified as amended at 16 U.S.C. §§ 791a–828c).

[35] *See Gulf States Utilities Co.* v. *FPC,* 411 U.S. 747, 758 (1973). The Federal Power Act represented a responsa to tha gap in stata regulation of utility rates and services that arose in tha wake of tha decision of the Unitad States Suprema Court in *Public Utilities Comm'n of Rhode Island* v. *Attleboro Steam & Elec. Co.,* 273 U.S. 83, 86–90 (1927), *overruled in part, Arkonsas Elec. Coop. v. Ark. Public Service Comm'n,* 461 U.S. 375, 390–96 (1983). Tha Court in *Attleboro* held that interstata wholesale sales of electricity were beyond the reach of stata regulation. *See New England Power Co. v. New Hompshire,* 455 U.S. 331, 340 (1982). *See generally* Note, *Federal Regulation of Holding Companies: The Public Utility Act of 1935,* 45 Yale L.J. 468 (1936).

[36] The Federal Power Act also gives the FERC jurisdiction over accounting practices and over facilities used for tha transmission of electricity in interstate commerce. Section 204 authorizes the FERC to regulate tha issuance of securities or assumption of obligations or liabilities by public utilities, but only if such issuance or assumption is not regulated by a state utilities commission. 16 U.S.C. § 824c. The FERC has interpreted this authority narrowly. *See* Michael Small, *A Guide to FERC Regulotion and Ratemaking of Electric Utilities and Other Power Suppliers,* 18 (3d ed. 1994).

[37] Congress in PURPA also gava the FERC direct authority to order wholesala transmission services by public utilities and by certain other entities. There were significant procedural and substantive limitations on this authority, however, and FERC issued only ona ordar pursuant to this authority. *See Central Power and Light Co.,* 17 FERC ¶ 61,078 (1981), *order on reh'g,* 18 FERC ¶ 61,100 (1982), *further order, Texos Utilities Elec. Co.,* 40 FERC ¶ 61,077 (1987).

[38] *See, e.g., Commonwealth Atlontic Ltd. Partnership,* 51 FERC ¶ 61,368 (1990).

[39] *See, e.g., Public Service Co. of Indiano,* 51 FERC ¶ 61,367 (1990).

[40] Open access transmission tariffs have been a cantral feature of recent combinations involving FERC-regulatad utilities. Major combinations involving FERC-regulated utilities hava included the mergers of Utah Power & Light Company and PacifiCorp; Northaast Utilities and Public Service of Naw Hampshire; Kansas Power & Light Company and Kansas Gas & Electric Company; Entergy Corporation and Gulf States Utilities Company; Cincinnati Gas & Electric Company and PSI Energy, inc.; and the proposed mergar of Central and South West Corporation and El Paso Electric Company. With the exception of tha Utah Power & Light merger, each of thasa mergers also is subject to the requirement of approval by the SEC.

[41] "Any electric utility, Federal power marketing agency, or any other person genarating electric energy for sale for resala" may apply to the FERC for an order requiring a utility to provida "transmission services (including any enlargement of transmission capacity necessary to provide such services)." Federal Powar Act section 211(a) (16 U.S.C. § 824j(a)).

[42] As of September 22, 1994, the FERC had granted six applications for mandatory services (three proposed orders and three final orders). *See, e.g., City of Bedford, Virginio,* 68 FERC ¶ 61,003 (1994).

Since enactment of the Energy Policy Act, the FERC has undertaken a number of initiatives with respect tc the development of competitive bulk power markets. These measures include a policy statement on regional transmission groups, a rulemaking on transmission information availability, and an inquiry on transmission pricing policy. in a series of cases, the FERC has also interpreted the Federal Power Act's prohibition on undue discrimination to require that transmission owners offer services to others comparable to those they provide to themselves.

generator status under the Energy Policy Act.[43]

b. *Natural gas.* FERC regulation of the natural gas industry has changed significantly since 1938, when the Natural Gas Act gave the FPC authority to set "just and reasonable" rates for pipelines selling natural gas for resale in interstate commerce.[44] Under the Natural Gas Act, the FPC had jurisdiction over both the price and the allocation of natural gas sold at the wellhead for resale in interstate commerce. During the late 1960s and the early 1970s, the FPC kept the wellhead price for interstate natural gas artificially low, thereby encouraging consumption. At the same time, the federal price restraints discouraged producers from dedicating reserves to the pipelines that served the interstate market. The result was a series of gas shortages in the mid-1970s.

In reaction to these shortages, Congress enacted the Natural Gas Policy Act of 1978, which provided for partial decontrol of natural gas at the wellhead.[45] Over the next decade, Congress and the FERC worked to encourage competition in the natural gas industry. Pursuant to the Natural Gas Wellhead Decontrol Act of 1989, the FERC implemented full producer deregulation, effective January 1, 1993.[46]

The latest of the FERC's major natural gas rulemakings, Order No. 636, significantly changed the structure of the services provided by interstate pipelines.[47] Among other things, the order requires that pipelines provide open access transportation service that is equal in quality for all gas supplies, regardless of whether the customer purchases gas from the pipeline or from another supplier.

2. State and Local Regulation

Regulation of electric and gas utilities varies among state and local governments. Most state commissions have authority to issue licenses, franchises or permits for the initiation of service, for construction or abandonment of facilities and related matters. With respect to retail rates, state commissions generally have the power to require prior authorization of rate changes, to suspend proposed rate changes, to prescribe interim rates and to initiate rate investigations. Most state commissions also have authority to control the quantity and quality of service, to require uniform systems of accounting, and to regulate the issuance of securities.[48]

Congress intended that the Commission's work be coordinated with, and complement, the work of state and local regulators.[49] In recent years, the Commission has worked in consultation with these regulators on a number of matters.

3. Other Considerations

Registered holding companies are subject to extensive reporting requirements under the Act. In addition, the securities of these companies are publicly held and are registered under the Securities Act of 1933 ("Securities Act"), and the companies must comply with the continuous disclosure requirements of the Securities Exchange Act of 1934 ("Exchange Act"). When Congress passed the Holding Company Act, these laws were still in their infancy. Congress has amended the Securities Act and the Exchange Act several times since 1935, in order to expand and strengthen the disclosure and reporting requirements, as well as the Commission's ability to enforce these provisions.[50] Thus, it appears that investors today have far greater access to information concerning their investment decisions.

The Commission requests comment on these and other factors, including the development of generally accepted accounting principles and the role of nationally recognized statistical rating organizations (NRSROs)[51] in protecting consumers and investors against holding company abuses.

III. Conceptual Issues

The electric and gas utility industry is in transition. The rapid growth that characterized the industry in the early part of this century has diminished. In addition, companies must adapt to an increasingly competitive environment. The present model of regulation under the Act, which strictly limits the size of a system's utility operations and the scope of its nonutility businesses, was intended to focus the attention of the registered holding company on the needs of its operating utilities, and thereby protect consumers and investors from the risks that might be associated with unrelated businesses. Some have suggested that this model is no longer appropriate and that market conditions require a broader focus on energy services and other nonutility activities. The Act, as currently administered, does not afford the degree of flexibility that many believe will be necessary to meet these changes.

One purpose of the study is to explore a new approach to regulation in this area. The Act was intended to protect the public interest and the interests of investors and consumers. The phrase "public interest" has been used in connection with the policy of curing evils that result "when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties."[52]

The need for adequate disclosure for investors has largely been addressed by developments in the federal securities laws and in the securities markets themselves.[53] With respect to consumer interests, it appears that retail distribution will continue to be a monopoly for at least the next decade, thus justifying the continued protection of captive consumers.

The Commission has noted that there is an inherent tension between the drive toward competitive markets, and the need to protect captive utility

[43] An exempt wholesale generator is exempt from all provisions of the Holding Company Act. *See* Holding Company Act section 32(a) (15 U.S.C. § 79z–5a(e)).

[44] Pub. L. No. 75–688, 52 Stat. 821 (1938) (codified as amended at 15 U.S.C. §§ 717–717w). In 1954, the U.S. Supreme Court ruled that sales by indapendent producers were also subject to regulation under the Natural Gas Act. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

[45] Pub. L. No. 95–621, 92 Stat. 3351 (1978) (repealad in 1987).

[46] Pub. L. No. 101–60, 103 Stat. 157 (1989) (codified as amanded at 15 U.S.C. § 3331).

[47] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (Apr. 16, 1992).

[48] *See* Charles F. Phillips, Jr., *The Regulation of Public Utilities: Theory and Practice* 136 (1993).

[49] Numarous sections of the Act refer to regulation at the state and local level. *See, e.g.*, Holding Company Act sections 2(a)(26), 6(b), 8, 9(b), 10(f), 18, 19 and 20(b) (15 U.S.C. §§ 79b(a)(26), f(b). h. i(b), j(f), r, s and t(b)).

[50] *See, e.g.*, Securities Acts Amendments of 1964. Pub. L. No. 88–467, 78 Stat. 565 (1964) (extending Securities Exchange Act registration requirements to over-the-counter securities); Williams Act, Pub. L. No. 90–439, 82 Stat. 454 (1968) (additional disclosure requirements in situations of control acquisitions); Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101–429, 104 Stat. 931 (1990) (increasing Commission's authority to seek and impose remedies against securities law violations).

The courts have also permitted private litigants to bring actions for violations of certain provisions of the securities laws. *See, e.g., Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, *reh'g denied*. 423 U.S. 884 (1975) (implied private right of action for securities fraud).

[51] *See* Securities Act Release No. 7085 (Aug. 31, 1994). 59 FR 46314 (Sept. 7, 1994) (concept release concerning the definition and status of NRSROs).

[52] Holding Company Act section 1(b)(4) (15 U.S.C. 79a(b)(4)), cited in *North American Co.*, 11 S.E.C. 194, 218–219 (1942), *aff'd*, 133 F.2d 148 (2d Cir. 1943), *aff'd*, 327 U.S. 686 (1946).

[53] *See* section 1(b)(1) of the Holding Company Act (15 U.S.C. § 79a(b)(1)) (investor interests may be adversely affected "when such investors cannot obtain tha information necessary to appraise the financial position or earning power of the issuers").

customers.[54] The magnitude of the anticipated change in the utility industry raises concerns whether any regulator can effectively protect ratepayers.[55] While some believe that market forces will ultimately result in lower prices for consumers, others suggest that there will be losers as well as winners along the way.[56] At a minimum, any new approach must carefully balance the competing interests, and provide safeguards against detriment to consumers.

Reform of existing regulation also calls into question the roles of the respective regulators. The Commission requests comments on these topics, especially on the need to adjust responsibilities among the regulators. It would be helpful, in this regard, for commenters to provide specific information concerning the various regulatory approvals that may be required for a transaction under present law.

The studies that preceded the Act found "wide differences in the extent and effectiveness of the regulatory policies of the various States."[57] Although there has been a significant increase in the reach of state utility regulation, the Commission has noted that the pattern of state control over operating utilities and their relationships with affiliates remains uneven.[58] There are concerns that the states remain unable to regulate interstate holding companies directly in a comprehensive fashion.[59]

The Commission seeks comment on the current status of the regulation of electric and gas utilities by the states. In particular, descriptions of the regulatory systems of each state would be helpful in determining the extent to which state regulators would be able to provide regulatory protection in the absence of a federal holding company statute. Comment is requested on the problems inherent in the regulation of a multistate system, including the possibility of conflict among the various state and local regulators.

Comment is also sought on the role of the FERC in regulating utility holding companies. Would the FERC's existing authority, combined with that of the states, suffice to protect consumers? In the absence of the Holding Company Act, it appears that there would be little direct regulation of the nonutilities that may ultimately comprise a significant part of a registered system's business activities. If there is a continuing need for a federal holding company statute, should the FERC rather than the SEC administer it?

IV. Specific Topics to Be Addressed

To facilitate the identification of issues, paragraphs in which comments are specifically requested in this section are numbered consecutively. Commenters are encouraged to refer to these numbers in their comments, but are also welcome to comment on any issues not contained in numbered paragraphs.

A. Financings and Intrasystem Transactions

Under the Holding Company Act, the Commission has broad authority over financings and intrasystem transactions involving companies in a registered holding company system. As discussed above, FERC and state regulatory approval is also required for certain transactions. In addition, the FERC and state regulators, in the exercise of ratemaking authority, may determine whether the costs associated with such transactions will be passed on to utility consumers.

1. Financings

Prior Commission approval is generally required for the issuance and sale of securities by a company in a registered system.[60] The Commission can refuse to authorize the issuance of a security that is not reasonably adapted to the capital structure of the issuer and other companies in the holding company system, or to the earning power of the issuer, or that "is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest."[61] The Act also requires Commission approval for various intrasystem financing transactions, including, among other things, loans from the parent to a subsidiary company, and guarantees by the parent of the obligations of a subsidiary company.[62]

1. Comment is sought on the Commission's review of financing transactions. As a general matter, are the protections provided by such review still necessary in view of developments in state and federal regulation? If this review is still needed, how could it be made more effective and efficient?

2. At the Roundtable, many participants emphasized the need to streamline Commission review and liberalize the standards for financings. Regulatory delay was described as an impediment to the companies' ability to access the capital markets. How critical a role does timing play in financial decisions? To what extent is regulatory delay an obstacle to desirable financing opportunities?

3. The Commission has adopted an approach, similar to the shelf-registration provisions of rule 415 under the 1933 Act,[63] under which a registered company may obtain authorization for all short-term debt financings contemplated for a two-year period.[64] Could this approach be expanded or altered to meet the companies' need for greater flexibility and speed of approval? Could a safe harbor for routine financings be properly tailored to balance a company's need for

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[54] Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993).

[55] At present, registered holding companies can readily invest up to 50 percent of their consolidated retained earnings, or approximately $7 billion, in exempt wholesale generators and foreign utility companies. See rule 53(a) under the Holding Company Act (17 CFR 250.53(a)).

[56] The introduction of competition in the natural gas industry, for example, was not without its costs. Many producers went out of business when wellhead prices collapsed. *See* Donald F. Santa, Jr. and Patricia J. Beneke, *Federal Natural Gas Policy and the Energy Policy Act of 1992*, 14 Energy L.J. 1, 8 (1993). The Columbia Gas System, a registered gas utility holding company, has filed for relief under Chapter 11 of the Bankruptcy Code (11 U.S.C. 1101 *et seq.*) in large part as a result of uneconomic take-or-pay contracts.

[57] Summary Report of the Federal Trade Commission to the Senate, Utility Corporations, S. Doc. No. 92, 70th Cong., 1st Sess., pt. 73–A, at 2 (1935).

[58] *See, e.g.*, Statement of the U.S. Securities and Exchange Commission Concerning Proposals to Amend or Repeal the Public Utility Holding Company Act of 1935 (June 2, 1982).

[59] *See* The National Energy Security Act of 1991: Hearings on S. 341 Before the Senate Comm. on Energy and Natural Resources, 102d Cong., 1st Sess. (1991) (statement of Edward H. Fleischman, Commissioner, SEC).

[60] *See* Holding Company Act section 6(a) (15 U.S.C. § 79f(a)). The Act permits the Commission to grant exemptions in certain situations, such as the issuance and sale of securities by a subsidiary if the transaction is expressly authorized by a state regulatory commission. *See* section 6(b) (15 U.S.C. § 79f(b)).

[61] Holding Company Act section 7 (15 U.S.C. § 79g). This standard has been modified for financings by registered holding companies for the purpose of acquiring interests in exempt wholesale generators. Holding Company Act section 32(h)(3) (15 U.S.C. § 79z–5a(h)(3)) provides that

> the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company and other companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, unless the Commission first finds that the issue or sale of such security, or the making of the guarantee, would have a substantial adverse impact on the financial integrity of the registered holding company system[.]

See also rule 53 (17 CFR 250.53).

[62] *See* Holding Company Act section 12 (15 U.S.C. § 79*l*) and rules thereunder.

[63] 17 CFR 230.415.

[64] *See, e.g., Northeast Utilities*, Holding Co. Act Release No. 25710 (Dec. 16, 1992), 53 SEC Dkt. 0190 (Jan. 5, 1993).

flexibility and speed with the need to protect ratepayers? What should be the parameters of a safe harbor (*e.g.*, minimum capitalization, dividend payout ratios, third-party credit ratings)? How should such routine financings be defined for the purpose of a safe harbor rule?

4. At the Roundtable, some suggested that utilities would like to issue a greater variety of securities in order to reduce capital costs. Under current administration of the Act, registered companies are generally limited to conventional securities, such as common stock, preferred stock, and first mortgage bonds. Should the financing standards be eased to permit companies in registered systems to issue different types of securities? What are the perceived risks and benefits of allowing such companies to issue innovative types of securities? What limitations, if any, would be appropriate in this regard? For example, should the Commission modify requirements such as minimum capitalization and coverage ratios to reflect current financing practices?

5. Some of the concerns described above could be addressed through Commission rulemaking. For example, the Commission has eased regulatory burdens in this area by adopting rule 52, which provides a safe harbor for certain routine utility financings that have been approved by the relevant state commission.[65] Has this rule been effective? Should other routine utility financings be similarly exempted? To what extent do state regulators currently regulate utility financings, or rely on the Commission's review of these transactions? Do the states have sufficient resources and authority to undertake more extensive reviews in this area?

6. The Commission has proposed further amendments to rule 52 that would unconditionally exempt many nonutility financings.[66] Should different standards apply to financings by system nonutility companies? For example, nonrecourse obligations are not counted toward the overall limit on a system's aggregate investment in exempt wholesale generators and foreign utility companies for purposes of rule 53 under the Act.

7. Under present law, intrasystem financings must mirror the terms of a system's external financings.[67] This requirement is intended to protect the system's operating companies, by ensuring that the holding company does not profit from intrasystem transactions. Is this restriction still needed, particularly with respect to nonutility financings?

8. The Commission regulates the ability of registered holding companies to declare and pay dividends.[68] Should the Commission ease the limitations imposed upon this activity?

9. Some have suggested that rating agencies perform a valuable service in highlighting potential financial instabilities. The Commission's administration of other securities statutes relies in some circumstances on the existence of investment grade ratings by nationally recognized statistical rating organizations.[69] Should the Commission pursue a regulatory approach that would utilize NRSRO credit ratings of utility companies in a registered holding company system?

2. Intrasystem Transactions

Under the Holding Company Act, the Commission also has broad authority over transactions among companies in a registered system. Section 13, in particular, was intended to eliminate abusive practices whereby utility subsidiaries were forced to pay grossly inflated costs for services and goods provided by an affiliate company. The profits from these transactions flowed to the holding company's controlling investors; the inflated costs were passed on as higher rates to consumers.[70]

The central provision, section 13(b), prohibits holding company subsidiaries from entering into or performing any service, sales, or construction contracts for associate companies unless the terms and conditions of the contract comply with Commission rules, regulations and orders.[71] Under the Commission's rules, interaffiliate transactions must generally be conducted at cost.[72]

10. Some commenters have suggested that the concerns about intrasystem transactions reflected in the Holding Company Act are no longer relevant. To what extent should the federal government regulate such transactions to prevent affiliate abuses?

11. Under current law, affiliate transactions may be subject to multiple regulatory reviews. Companies in a registered system generally must obtain Commission approval to enter into affiliate contracts. The costs associated with these transactions may be subject to further review by the FERC and state regulators. The possibility of inconsistent determinations by the various regulators was highlighted by the recent Ohio Power decision, in which the U.S. Court of Appeals for the District of Columbia Circuit held that the FERC was precluded from reexamining costs established pursuant to a Commission order under section 13(b) of the Act.[73] There are concerns that the Ohio Power decision can be interpreted to challenge the ability of the FERC, as well as state and local regulators, to protect consumers through traditional ratemaking proceedings. How can these concerns best be addressed?[74] Should responsibility in this area continue to be apportioned between the SEC and the FERC?

12. Several commenters at the Roundtable emphasized the need for a single federal arbiter, either the SEC or the FERC, in order to avoid inconsistent state determinations and any potential tendency among states to shift costs to

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[65] 17 CFR 250.52 (Commission approval is not required for a utility subsidiary of a registered holding company to issue or sell common stock, preferred stock, and mortgage bonds, or to issue a note to its parent company, for the purpose of financing its business as a public-utility company, where the financing transaction has been expressly approved by the relevant state commission). The Commission has requested comment on an amendment that would exempt additional types of utility financings. *See* Holding Co. Act Release No. 25574 (July 7, 1992), 57 FR 31156 (July 14, 1992).

[66] *See* Holding Co. Act Release No. 25574 (July 7, 1992), 57 FR 31156 (July 14, 1992) (requesting comment on, among other things, an exemption for nonutility transactions that "are solely for the purpose of financing the [company's] existing business").

[67] *See, e.g., Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26072 (June 27, 1994), 57 SEC Dkt. 0067 (July 26, 1994).

[68] *See, e.g.*, Holding Company Act rule 46 (17 CFR 250.46).

[69] *See, e.g.*, 17 CFR 240.15c3–1 (net capital rule for broker-dealers); 17 CFR 239.13(b)(2) (instructions for Securities Act Registration Form S–3). The Commission recently issued a release in which it posed questions regarding the Commission's reliance on NRSRO ratings. *See* Securities Act Release No. 7085 (Aug. 31, 1994), 59 FR 46314 (Sept. 7, 1994). Comments on the release are available for public inspection in File No. S7–23–94.

[70] Section 13 of the Act

> is designed to free public-utility companies of the tribute heretofore extracted from them in the performance of service, sales, and construction contracts by their holding companies and by servicing, construction, and other companies controlled by their holding companies. Such contracts when made freely and openly by parties dealing at arms' length are subject to the checks incident to our competitive system, but when dictated by holding companies sitting on both sides of the transaction are one of the most abused devices of the public-utility holding company system.

S. Rep. No. 621, 74th Cong., 1st Sess. 36 (1935).

[71] 15 U.S.C. § 79m(b).

[72] *See* rules 90–92 under the Holding Company Act, 17 CFR 250.90–92.

[73] *Ohio Power Co. v. FERC*, 954 F.2d 779 (D.C. Cir.), *cert. denied*, 113 S. Ct. 483 (1992).

[74] The Commission staff is working on a rulemaking to address these concerns. In addition, Congress has considered legislation to clarify the regulatory roles of the Commission and the FERC with respect to the approval of contracts and rates related to intra-system transactions. *See* S. 544, 103d Cong., 1st Sess. (1993); H.R. 4645, 103d Cong., 2d Sess. (1994).

other jurisdictions. Should federal oversight of these transactions be consolidated under a single regulator?

13. What role, if any, should states play in regulating such transactions? What additional powers do state regulators need to be able to protect consumers against affiliate abuses? Some states, for example, may not have access to all relevant books and records.[75] Should state access be enhanced if Holding Company Act restrictions are to be relaxed?

14. Should transactions between utilities in a holding company system be regulated differently than transactions between a utility and a nonutility company in a holding company system?

B. Utility Acquisitions

The Commission is charged with overseeing the growth and extension of holding companies to avoid recreating, by acquisition, the problems that the Act was intended to undo or eliminate.[76] The Holding Company Act addresses these concerns by requiring Commission approval for most utility acquisitions. The standards for acquisition approval relate to the overall structure of the resulting system, and the effect of the acquisition upon the public interest and the interests of investors and consumers, the "protected interests" under the Act.

15. There have been suggestions that the Commission's work in this area has been largely superseded by the FERC's review of utility mergers.[77] In recent matters, the Commission has relied upon the FERC's analysis of certain issues that are closely linked to operations. The Commission requests comment on the extent to which its review under the standards of section 10 may duplicate the efforts of other regulators.

16. Comment is also requested on the issue of takeover attempts of utility operating companies or their parent holding companies. What has been the effect of the Holding Company Act on such takeover attempts in the past? Should the Commission devise special rules for such takeovers?[78]

1. Integration

Under section 11 of the Act, a registered holding company is generally limited to a single integrated public-utility system. The integration requirement was intended to ensure economical and efficient utility operations in the context of a monopoly environment. Some critics have challenged the continuing usefulness of this requirement, given the movement towards greater competition in the industry.

17. Does the integration requirement still serve the interests of investors and consumers? What effect does geographic proximity have on a utility's efficiency of operation, particularly in view of open access transmission policies?[79] Has the requirement of geographic integration hindered the development of creative solutions to the production and delivery of energy?

18. One of the assumptions underlying the Act was that utilities were essentially local institutions that should be locally controlled and owned.[80] Is this premise still valid, in view of the technological and regulatory developments of the past 60 years?

19. The definition of an "integrated public-utility system" gives the Commission flexibility to respond to technological advances and other changes in the industry.[81] Should the definition be read to accommodate nontraditional systems? For example, one commenter has suggested that, as a result of open access policies, all gas companies in the United States could be deemed to comprise a single integrated system.[82]

2. Combination Systems

The Commission and the courts have previously interpreted section 11 of the Holding Company Act to prohibit a registered holding company from owning both gas and electric facilities.[83] There is a tension between this precedent and section 8 of the Act, which appears to contemplate the combination of gas and electric properties.[84]

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[75] Access to books and records is discussed further below. *See* Section IV.E *infra*.

[76] *Public Service Co. of Oklahoma*, 45 S.E.C. 878, 882 (1975).

[77] *See* section 203 of the Federal Power Act. 16 U.S.C. § 824b. The legislative history indicates that section 203 was intended to complement the Holding Company Act. *See* S. Rep. No. 621, 74th Cong., 1st Sess. 50 (1935) ("In this way the [FERC] would have authority to keep the same kind of check upon the creation of spheres of influence among operating companies that the Securities and Exchange Commission has over holding companies under [the Holding Company Act].").

Until recently, the FERC did not exercise jurisdiction over the merger of holding companies. *See Missouri Basin Municipal Power Agency* v. *Midwest Energy Co.*, 53 FERC ¶ 61,368 (1990). The agency, however, has revised its position and announced that such mergers are presumptively subject to FERC approval. *See Illinois Power Co.*, 67 FERC ¶ 61,136 (1994).

[78] Rule 51 provides that a tender offer is subject to the section 9(a) restrictions on acquisitions of utility securities by utility affiliates, unless the tender offer meets certain conditions. 17 CFR 250.51.

[79] Although the Energy Policy Act of 1992 permits registered holding companies to acquire exempt wholesale generators and foreign utility companies without regard for physical interconnection and geographic proximity, the rationale for this type of exemption appears to be that there are no "captive" U.S. consumers associated with these new entities.

[80] *See, e.g.*, 79 Cong. Rec. 8389 (1935) (statement of Sen. Wheeler).

[81] Section 2(a)(29) (15 U.S.C. 79b(a)(29)) defines an "integrated public-utility system" as follows:

(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; *Provided*, That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

[82] *See* Columbia Gas System, *Initial Comments on the Need for Legislative Reform* (Aug. 10, 1994) (available in Public Comment File No. S7–19–94).

[83] *See SEC v. New England Elec. System*, 384 U.S. 176, 183 (1966); *Northeast Utilities*, Holding Co. Act Release No. 24908 (June 22, 1989), 43 SEC Dkt. 2115, 2135–37 (July 5, 1989). These decisions focused largely on the anticompetitive effects of dual electric and gas ownership.

[84] Section 8 (15 U.S.C. 79h) provides:

Whenever a State law prohibits, or requires approval or authorization of, the ownership or operation by a single company of the utility assets of an electric utility company and a gas utility company serving substantially the same territory, it shall be unlawful for a registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise—

(1) to take any step, without the express approval of the State commission of such State, which results in its having a direct or indirect interest in an electric utility company and a gas utility company serving substantially the same territory; or

(2) if it already has any such interest, to acquire, without the express approval of the State commission, any direct or indirect interest in an electric utility company or gas utility company serving substantially the same territory as that served by such companies in which it already has an interest.

In addition, the Commission has permitted combination systems under the so-called "A-B-C clauses" of section 11(b)(1), which permit a registered holding company to control additional integrated public-utility systems if (A) each additional system cannot be operated as an independent system without the loss of substantial economies, (B) all additional systems are located in one state, or in adjoining states, or in a contiguous foreign country, and (C) the continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation. *See* 15 U.S.C. § 79k(b)(1). *See also UNITIL Corp.*, Holding Co. Act Release No. 25524 (Apr. 24, 1992), 51 SEC Dkt. 0764 (May 12, 1992).

20. What are the perceived risks and benefits of allowing registered holding companies to own and operate a combination of gas and electric properties?[85] Specifically, are gas and electric utilities sufficiently similar in operation and management that ownership by a single holding company could lead to gains in efficiency? Are there adequate protections against the potential anticompetitive effects of such combination systems?

3. Foreign Ownership

Congress in 1935 did not consider the question of foreign ownership of U.S. public-utility companies. The Energy Policy Act of 1992 authorized foreign ownership of U.S. exempt wholesale generators which, by definition, have no retail customers. The legislation did not address the further issue of foreign ownership of a U.S. utility with captive retail customers. The Commission has been asked to consider this issue in a pending administrative proceeding, *Noverco, Inc.*, Admin. Pro. File No. 3–7097.[86]

Federal law imposes various restrictions on foreign ownership of other regulated industries. Some laws specifically restrict foreign ownership,[87] while others provide for such ownership subject to certain conditions. The Federal Aviation Act, for example, establishes percentage limitations on board membership and voting interests in determining whether an air carrier is considered a United States citizen.[88]

21. At the Roundtable, many commenters expressed the view that foreign investors should be permitted, subject to appropriate conditions, to acquire U.S. utilities. Should the law permit such foreign ownership? What conditions should be placed on foreign ownership?

22. Is there a national security interest in restricting foreign ownership of U.S. utilities?[89] Are there difficulties in obtaining information from foreign companies that would support limitations on foreign ownership? What types of safeguards or limitations on ownership might prevent or minimize such risks?

23. United States companies have acquired significant interests in foreign utilities over the past several years. Would restrictions on foreign ownership of U.S. utilities be likely to lead to restrictions on investment in foreign utilities by U.S. investors?

C. Diversification

Among other things, the Holding Company Act was intended to simplify the structure of the utility industry by confining holding companies to the management of a single system of operating companies, without entanglement in extraneous lines of business. Section 11(b)(1) provides that nonutility businesses must be "reasonably incidental, or economically necessary or appropriate" to a system's core utility operations. The Commission and the courts have interpreted the "other business" provisions to require a "functional relationship" between a nonutility business and the utility operations of a registered holding company system.[90] The functional relationship requirement was intended to focus the attention of the registered holding company on its operating utilities in order to protect consumers and investors from risks associated with unrelated businesses.

24. At the Roundtable, many commenters expressed the opinion that additional latitude is necessary. To what extent do utilities hope to improve their economic position through diversification? How can the applicable standards be made more flexible while retaining appropriate consumer protections?

25. What are the risks and benefits of diversification for consumers? What are the risks and benefits for investors? Under what circumstances would the risks associated with diversification outweigh the potential benefits? Is low earnings growth in the core utility business the primary justification for further diversification? Do other factors, such as the cyclical business patterns of other industries, also support diversification?

26. Should there be limits on diversification by registered holding companies? If so, what types of limits are most appropriate (*e.g.*, investment caps, ratios based on retained earnings or income, regulatory veto authority)? If not, how would increased diversification affect the ability of the FERC and state regulators to protect the interests of consumers?

27. Has the requirement that nonutility interests be "functionally related" to a system's core utility operations demonstrably benefited investors and consumers of registered holding companies? What has been the experience of companies that were not similarly constrained?[91] Are there limits on diversification by these companies? Are these experiences likely to be repeated in the future, or did they result from unique circumstances? Do these companies face other types of limitations?

28. If constraints on diversification were eased, would there be a need for additional safeguards against cross-subsidization? What are the major issues in this area? For example, does a nonutility's use of proprietary information such as an associate utility's customer information raise cross-subsidization concerns?

29. Should there be different limitations on foreign and domestic diversification by registered holding companies?

30. To what extent should a utility's past experience in a particular type of business affect its ability to engage in similar activities in the future?

D. Exemptions

There are a number of exemptions from, or exceptions to, regulation under the Act for certain companies. Each reflects a legislative determination that the purposes and policies of the Act are not implicated. Certain entities do not come within the ambit of the Act.[92] Other entities are subject to limited regulation under the Act because they

[85] In a recent matter, the Commission reserved jurisdiction, pending the completion of the Study, over the ownership of electric and gas properties by a registered holding company. *See CINergy Corp.*, Holding Co. Act Release No. 26146 (Oct. 21, 1994).

[86] At issue in that matter is the acquisition of a Vermont gas utility by a Canadian holding company. The Division of Investment Management opposed the acquisition, arguing that the Holding Company Act does not permit foreign ownership of a domestic public-utility company.

[87] *See, e.g.*, 16 U.S.C. 797 (power production on land and water controlled by the U.S. government); 42 U.S.C. 2131 - 2134 (prohibition of foreign ownership or control of facilities that produce or use nuclear materials); 42 U.S.C. § 6508 and 43 U.S.C. § 1701 *et seq.* (oil and gas leases within the National Petroleum Reserve).

[88] *See* 49 U.S.C. § 1301(16) (air carrier considered U.S. citizen if president and two-thirds of board of directors and other managing officers are U.S. citizens and at least 75% of voting interest is owned or controlled by U.S. citizens).

[89] Congress has authorized the President to investigate the national security effects of "foreign control of persons engaged in interstate commerce in the United States," and to suspend or prohibit any acquisition, merger, or takeover of such persons in order to protect the national security. 50 U.S.C. App. section 2170. The President has established the Committee on Foreign Investment in the United States to administer this authority. *See* 31 CFR 800.101 *et seq.*

[90] *See Michigan Consol. Gas Co. v. SEC*, 444 F.2d 913 (D.C. Cir. 1971); *CSW Credit, Inc.*, Holding Co. Act Release No. 25995 (Mar. 2, 1994), 56 SEC Dkt. 0521 (Mar. 22, 1994).

[91] Some analysts have observed that utilities that diversified in the past decade did not fare as well economically as the registered holding companies, which were unable to diversify. *See, e.g.*, Charles M. Studness, *Earnings from Utility Diversification Ventures*, Pub. Util. Fort., Sept. 1, 1992, at 28–29.

[92] For example, the Commission has authority to declare that an entity is not an electric utility company, gas utility company, holding company, or subsidiary company within the meaning of the Act. *See* Holding Company Act sections 2(a)(3), 2(a)(4), 2(a)(7) and 2(a)(8) (15 U.S.C. §§ 79b(a)(3), b(a)(4), b(a)(7) and b(a)(8)) and rules thereunder.

are presumptively subject to effective state regulation,[93] or because there is limited regulatory concern.[94] In each instance, the exemption may be revoked by the Commission on a finding of detriment to the interests of investors or consumers.

31. The Commission generally exempts holding companies from all provisions of the Act except section 9(a)(2), which requires Commission approval for subsequent utility acquisitions. What has been the experience of exempt holding companies? Is there a continuing need to review utility acquisitions by exempt holding companies? Conversely, is there a need for increased Commission oversight in some areas?

32. Do the theories underlying these exemptions remain valid? What other types of companies should be exempted from the Act? Should the Commission adopt safe harbors in this area? Should state certification be a condition for exemption?[95]

E. The Audit Function

The Act gives the Commission broad authority to impose reporting and accounting requirements for registered holding companies. Among other things, the Commission may require the filing of annual, quarterly, and other periodic reports by registered holding companies, and may require such reports to be certified by an independent public accountant.[96] The Commission can establish the form of accounts and prescribe uniform methods of keeping accounts for registered system companies.[97]

1. Books and Records

33. As companies increasingly engage in activities not directly related to their core utility operations, it becomes more important for ratemakers to have access to the information necessary to protect utility consumers from the potential adverse effects of these new ventures. Under the Act, the Commission has broad access to the books and records of companies in a registered system.[98] What books and records do state regulators and the FERC currently have authority to examine? What additional access is needed? How can the Commission facilitate access by other regulators? How can the Commission address confidentiality concerns raised by the companies?

2. Auditing

34. In recent years, the Commission's audits have focused on service companies and nonutility subsidiaries of registered holding companies, including exempt wholesale generators and foreign utility companies. Among other things, these audits are intended to detect cross-subsidization and other affiliate abuses. Is there a need for an enhanced audit function? Is there duplication between FERC and SEC review? Between state and federal review? How can the Commission's audit program better facilitate state and FERC regulation?

3. Reporting

Registered, and many exempt, holding companies are required to file annual reports under the Holding Company Act.[99] In addition, service company subsidiaries of the registered holding companies are required to file annual reports. Further, registered holding companies must also file reports under the other federal securities laws.

35. Under the Act, registered holding companies must disclose financial information concerning each system company.[100] What additional information should be required if, for example, registered holding companies were permitted to diversify more freely? Should this requirement be extended to exempt holding companies?

F. Miscellaneous

1. Investment Company Issues

36. Questions have arisen in recent years concerning investment companies and investment advisers that acquire the securities of public-utility companies. Should these entities be subject to regulation as utility affiliates[101] or public-utility holding companies[102] under the Act?

2. Other Issues

The Holding Company Act authorizes the Commission to regulate many registered holding company activities that are also regulated today by other federal laws. For example, with respect to registered holding companies and subsidiaries, the Commission has broad regulatory authority over proxy solicitations, powers of attorney, and other types of authorizations;[103] sales of utility securities and assets;[104] officers and directors;[105] political

[93] *See* Holding Company Act section 3(a)(1) (15 U.S.C. § 79c(a)(1)) ("predominantly intrastate" holding company); section 3(a)(2) (15 U.S.C. 79c(a)(2)) (holding company that is "predominantly a public-utility company").

[94] *See* Holding Company Act section 3(a)(3) (15 U.S.C. § 79c(a)(3)) (utility operations functionally related to holding company's primary nonutility business); section 3(a)(4) (15 U.S.C. § 79c(a)(4)) (company is only temporarily a holding company); and section 3(a)(5) (15 U.S.C. § 79c(a)(5)) (U.S. company holds essentially foreign utility operations).

[95] Columbia Gas System, Inc., for example, has suggested that Congress should amend section 3(a)(1) to exempt a holding company of which each utility subsidiary is predominantly intrastate in character and carries on its business substantially in a single state subject to regulation by a state authority as to rate and financial matters. Columbia Gas System, *Initial Comments on the Need for Legislative Reform* (Aug. 10, 1994). *See also Post-Round Table Comments of Central and South West Corporation* (Oct. 5, 1994).

[96] Holding Company Act section 14 (15 U.S.C. § 79n).

[97] Holding Company Act section 15 (15 U.S.C. § 79o).

[98] *See* Holding Company Act section 15(f) (79 U.S.C. § 79o(f)); *see also* rule 53 under the Holding Company Act (17 CFR 250.53).

[99] Holding companies seeking exemption under sections 3(a)(1) or 3(a)(2) of the Holding Company Act may apply for a Commission order or, in the alternative, file a claim of exemption pursuant to rule 2 under the Act (17 CFR 250.2). This claim of exemption, Form U–3A–2, must be renewed annually.

[100] *See* Form U5S, which requires disclosure on a consolidating basis. In contrast, consolidated financial statements are required for registration statements and reports under other federal securities laws. *See* Article 3 of Regulation S–X (17 CFR 210.3–01 *et seq.*).

[101] *See* Holding Company Act section 2(a)(11)(A) (15 U.S.C. § 79b(a)(11)(A)) (any person owning 5 percent or more of the outstanding voting securities of a company is an affiliate of that company). Under section 9(a)(2), an affiliate of a public-utility company may need to obtain prior Commission approval for any subsequent acquisition of utility securities. 15 U.S.C. § 79i(a)(2).

[102] *See* Holding Company Act section 2(a)(7) (15 U.S.C. § 79b(a)(7)). Among other things, a holding company may be required to divest any unrelated nonutility interests. *See* Holding Company Act section 11(b)(1) (15 U.S.C. § 79k(b)(1)).

[103] *See* section 12(e) (15 U.S.C. § 79*l*(e)). Under rules 60 through 65 (17 CFR 250.60–65), the Commission can review solicitation materials prior to their effectiveness and require the disclosure of funds spent to compensate persons who conduct solicitations. Rule 61 also provides that the solicitation of proxies is subject to the rules promulgated under section 14(a) of the Securities Exchange Act (15 U.S.C. § 78n(a)). 17 CFR 250.61.

[104] *See* Holding Company Act section 12(d) (15 U.S.C. § 79*l*(d)). This provision was enacted to prevent the piecemeal evasion of the reorganization accomplished under section 11 of the Act, and to prevent the sacrifice of investors' equity. S. Rep. No. 621, 74th Cong., 1st Sess. 35 (1935).

Under rule 44 (17 CFR 250.44), registered holding companies are required to submit proposed sales of securities or assets to the Commission by a declaration and to obtain an order from the Commission permitting such sales. The rule exempts holding companies from submitting such declarations regarding the sale of securities or of utility assets up to $5,000,000 during any calendar year if the acquisition does not also require Commission approval.

[105] Officers and directors of registered holding companies are subject to certain reporting requirements and trading limitations that are similar to those imposed by section 16 of the Securities Exchange Act of 1934 (15 U.S.C. § 78p). *See* Holding Company Act section 17 (15 U.S.C. § 79q). The Commission has adopted rules intended to minimize duplicative regulation. *See* rule 72 under the Holding Company Act (17 CFR 250.72) (section 17(a) deemed satisfied by statements of beneficial ownership filed under section 16(a) of the Securities Exchange Act). The Act also restrict

contributions;[106] and lobbying.[107] Comments are sought on the continued need for regulation under the Holding Company Act specifically directed at these various activities.

V. Administrative Policy During the Period of Reexamination

During the pendency of the review of comments elicited by this release, and while awaiting adoption of such legislative or administrative amendments as may result therefrom, the Commission intends to continue its past practice of administering the Holding Company Act to accommodate changes in the industry and the regulatory environment, within the guidelines of the statute and past interpretations by the courts and the Commission.

VI. Conclusion

In reexamining the regulation of public-utility holding companies, the Commission is seeking comment on a number of specific regulatory issues. Commenters are encouraged, however, to address any other matters that they believe merit reexamination.

By the Commission.

Dated: November 2, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27565 Filed 11–7–94; 8:45 am]

BILLING CODE 8010–01–P

participation by officers and directors of commercial and investment banks as officers and directors of companies in registered systems. *See* Holding Company Act section 17(c) (15 U.S.C. § 79q(c)).

[106] Registered holding companies and their subsidiaries are prohibited from making campaign or political party contributions. Holding Company Act section 12(h) (15 U.S.C. § 79*l*(h)). The Federal Election Campaign Act of 1971, however, permits registered holding companies to make contributions through political committees. *See* Pub. L. No. 92–225, 86 Stat. 3 (1972) (codified as amended at 2 U.S.C. §§ 431–55).

[107] Holding Company Act section 12(i) (15 U.S.C. § 79*l*(i)) requires a registered holding company or subsidiary that engages in lobbying efforts before the Congress, the SEC or the FERC or any of its members, officers, or employees to file certain forms with the Commission providing information such as the subject matter of and compensation for the lobbying efforts.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–94–090]

Special Local Regulations for Marine Events; New Year's Eve Celebration Fireworks; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the permanent regulations for the New Year's Eve Celebration Fireworks Display. This regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area to provide for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 11 p.m., Saturday, December 31, 1994 until 1 a.m., Sunday, January 1, 1995. If inclement weather causes the postponement of the event, the regulations are effective from 8 p.m. until 10 p.m., on January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Norfolk Festevents, Ltd. submitted an application requesting a permit to sponsor a fireworks display on March 16, 1994 to take place at 12 a.m., on January 1, 1995. The fireworks display will be launched from barges anchored in the Elizabeth River off Town Point Park, Norfolk, Virginia. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented to provide for the safety of life and property. The waterway will be closed during the fireworks display. This notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels, both during, and for one hour before and after, the effective period under 33 CFR 100.501, expect that the Coast Guard Patrol Commander may order the draw opened for commercial vessels.

Dated: October 21, 1994.

M.K. Cain,

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

[FR Doc. 94–27675 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Jacksonville Regulation 94–027]

RIN 2115–AA97

Safety Zone Regulations; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone in the St. Johns River around barges launching fireworks located between the Hart and Acosta Bridges. The permanent safety zone relieves the need to establish temporary safety zones for the purpose of regularly scheduled fireworks displays. The zone will be placed into effect during fireworks displays to protect vessels in the vicinity from safety hazards associated with the storage, preparation and launching of fireworks. Entry into this zone is prohibited, unless authorized by the Captain of the Port. It will automatically terminate at the conclusion of the fireworks display unless terminated earlier by the Captain of the Port or District Commander.

EFFECTIVE DATE: December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Varamo, at Coast Guard Marine Safety Office, Jacksonville, Florida, tel: (904) 232–2648.

SUPPLEMENTARY INFORMATION: On May 5, 1994 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for this regulation (59 FR 23179). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Lieutenant A. Varamo, project officer for the Captain of the Port Jacksonville, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

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 rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation consistent with section 2.B.2.C of Commandant Instruction M16475.1B and the establishment of safety zones has been determined to be categorically excluded from further environmental documentation.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone will only be in effect during the preparation and launching of fireworks. The Coast Guard will notify the public of the activation of the safety zone by transmitting a Broadcast Notice to Mariners on appropriate VHF–FM radio frequencies in advance of each fireworks display. The exact time of each safety zone will be included in the Broadcast Notice to Mariners. Each safety zone is expected to last for approximately one hour, which includes the time immediately prior to, during, and after the fireworks display.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.721 is added to read as follows:

§ 165.721 Safety Zone: St. Johns River, Jacksonville, FL

(a) *Location.* The following area is established as a safety zone during the specified conditions: The waters within a 500 yard radius of the fireworks barge or barges during the storage, preparation, and launching of fireworks in the St. Johns River between the Hart and Acosta Bridges.

(b) *Effective dates.* This section becomes effective upon activation by the Captain of the Port by the broadcasting of a local Notice to Mariners on appropriate VHF–FM radio frequencies. It terminates at the conclusion of the fireworks display unless terminated earlier by the Captain of the Port.

(c) *Regulations. (1) In accordance with the general regulations in 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Captain of the Port or District Commander.*

(2) This regulation does not apply to authorized law enforcement agencies operating within the Safety Zone.

Dated: October 28, 1994.

A. Regalbuto,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 94–27674 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO37–1–6688; FRL–5096–5]

Conditional Approval and Promulgation of Air Quality Implementation Plans; Colorado; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving a vehicle inspection and maintenance (I/M) State Implementation Plan (SIP) revision based on the Governor's June 24, 1994 commitment to adopt final regulations for dealership self-testing within one year of the conditional approval. If this commitment is not met, the conditional approval will automatically convert to a disapproval. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the Denver and Boulder urbanized areas, including all or part of the Colorado counties of Adams, Arapahoe, Boulder, Denver County, Douglas, Jefferson. This action is being taken under section 110 of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on December 8, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at United States Environmental Protection Agency Region 8, Air, Radiation & Toxics Division, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2466. Anyone wanting to view these documents must make an appointment a least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, Air Programs Branch, State Implementation Plan Section (8ART-AP), US Environmental Protection Agency, Region 8, Denver, Colorado 80202, (303) 293–1887.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 14, 1994 (59 FR 35875), EPA published a notice of proposed rulemaking (NPR) for the State of Colorado. The NPR proposed conditional approval of an enhanced vehicle I/M program in the Denver and Boulder urbanized areas, including all or part of the Colorado counties of Adams, Arapahoe, Boulder, Denver County, Douglas, Jefferson. On January 14, 1994, and on June 24, 1994, Roy Romer, Governor of the State of Colorado, submitted to EPA enhanced I/M SIP revisions for the Denver and the Boulder urbanized areas. Public hearings were held on November 12, 1993, and December 16, 1993, for the January 14, 1994 SIP submittal, and are to be held on September 15, 1994, for the June 24, 1994, SIP submittal, as detailed in the Governor's June 24, 1994 letter. More detailed analyses of the State's submittals are contained in the

NPR action as published July 14, 1994. Other specific requirements of the enhance I/M program and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is conditionally approving the Colorado enhanced motor vehicle I/M program. Conditional approval is based on the State's commitment to adopt final regulations for dealership self-testing within one year of final conditional approval. If such conditions are not met by this date, the conditional approval will automatically become a disapproval.

III. Administrative Review

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.

OMB has exempted these actions from review under Executive Order 12866.

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 January 9, 1995. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 14, 1994.

Jack W. McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(69) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(69) On January 14, 1994 and on June 24, 1994, Roy Romer, the Governor of Colorado, submitted SIP revisions to the Implementation Plan for the Control of Air Pollution. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance program in the Denver and Boulder urbanized areas as required by section 187(a)(6) of the Clean Air Act Amendments of 1990. This material is being incorporated by reference for the enforcement of Colorado's enhanced I/M program only.

(i) Incorporation by reference.

(A) Colo. Rev. Stat. Sections 42–4–306.5—42–4–316 adopted June 8, 1993 as House Bill 93–1340, effective July 1, 1993.

(B) Regulation No. 11 (Inspection/Maintenance Program) as adopted by the Colorado Air Quality Control Commission (AQCC) on March 17, 1994.

(ii) Additional materials.

(A) SIP narrative and technical appendices 1–20 as corrected and approved by the AQCC on June 21, 1994. The narrative is entitled "State of Colorado Motor Vehicle Inspection and Maintenance State Implementation Plan", dated December 16, 1993 with technical corrections.

[FR Doc. 94–27602 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[UT6–1–5684; MT15–1–5691; A–1–FRL–5091–7]

Approval and Promulgation of Air Quality Implementation Plans; States of Montana and Utah; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the States of Montana and Utah. The Montana and Utah revisions implement oxygenated gasoline programs in Missoula, Montana, and in the Provo-Orem and Salt Lake City-Ogden, Utah, Metropolitan Statistical Areas. These SIP revisions were submitted to satisfy the requirement of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act), which requires all carbon monoxide nonattainment areas with a design value of 9.5 parts per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATES: This final rule is effective December 8, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at United States Environmental Protection Agency Region 8, Air, Radiation & Toxics Division, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, Air Programs Branch, State Implementation Plan Section (8ART-AP), US Environmental Protection Agency, Region 8, Denver, Colorado 80202, (303) 293–1887.

SUPPLEMENTARY INFORMATION: On October 20, 1993 (58 FR 54081–54086), EPA published a notice of proposed rulemaking (NPR) for the State of Montana and the State of Utah. The NPR proposed approval of oxygenated gasoline programs in both states. On November 6, 1992, Stan Stephens, Governor of Montana, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 25, 1992. On November 9, 1992, Norman H. Bangerter, Governor of Utah, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 30, 1992. On May 19, 1994, Governor Michael O. Leavitt submitted to EPA final regulations for Utah's Oxygenated Gasoline Program. Utah's regulations contained no substantive changes from the draft regulations on which EPA proposed approval (58 FR 54081) of Utah's Oxygenated Gasoline Program using EPA's "parallel processing" procedure. The State adopted these regulations on July 1, 1993 and on July 19, 1993, both with effective dates of September 1, 1993.

Since September 1993, the State adopted a revised version of the oxygenated gasoline regulations, effective December 16, 1993, requiring the Salt Lake City-Ogden MSA to implement an oxygenated gasoline program beginning November 1, 1994. The State exempted this MSA for the 1993–94 season pending a decision on a waiver request submitted to EPA. EPA will address the waiver request issue in

a separate document. The waiver decision will be forthcoming in the **Federal Register**. The certified copy of the regulations, effective December 16, 1993, contain no substantive changes from EPA's proposed approval. More detailed analyses of the States' submittals were prepared as part of the NPR action and are contained in a Technical Support document (TSD) dated July 20, 1993, which is available from the Region 8 office listed in the Addresses section of this document.

Other specific requirements of the oxygenated gasoline programs and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the revisions to the Montana SIP and the revisions to the Utah SIP as proposed, for both oxygenated gasoline programs meeting the requirements of section 211(m) of the Act.

Administrative Review

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.

OMB has exempted these actions from review under Executive Order 12866.

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 January 9, 1995. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: October 5, 1994.

Jack W. McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(32) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(32) On November 6, 1992, Stan Stephens, the Governor of Montana, submitted a SIP revision to the Implementation Plan for the Control of Air Pollution. This revision establishes and requires the implementation of an oxygenated fuels program in Missoula County as required by section 211(m) of the Clean Air Act Amendments of 1990.

(i) Incorporation by reference.

(A) Missoula City-County Rule 1429, which establishes and requires the implementation of an oxygenated fuel program, as adopted June 9, 1992.

(ii) Additional materials.

(A) Letter dated November 6, 1992, from Governor Stan Stephens submitting the oxygenated gasoline program SIP revision.

(B) Stipulation signed June 12, 1991 between the Montana Department of Health and Environmental Sciences and the Missoula City-County Air Pollution Control Board, which delineates the responsibilities and authorities between the two entities.

(C) Board order issued September 25, 1992 by the Montana Board of Health and Environmental Sciences approving amendments to Missoula City-County Air Pollution Control Program, adopting Rule 1429 establishing and implementing an oxygenated fuels program.

* * * * *

Subpart TT—Utah

3. Section 52.2320 is amended by adding paragraph (c)(26) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(26) On November 9, 1992, Norman Bangerter, the Governor of Utah, submitted a SIP revision to the Utah Implementation Plan and Utah Air Conservation Regulations. This revision establishes and requires the implementation of oxygenated fuel programs in Provo-Orem and Salt Lake-Ogden Metropolitan Statistical Areas as required by section 211(m) of the Clean Air Act Amendments of 1990.

(i) Incorporation by reference.

(A) R307–8; Oxygenated Gasoline Program, of the Utah Air Conservation Regulations as adopted by the State, effective December 16, 1993.

(ii) Additional materials.

(A) Letter dated November 9, 1992, from Governor Norman Bangerter submitting the oxygenated gasoline program SIP revision.

(B) Letter dated May 19, 1994, from Governor Michael O. Leavitt submitting the oxygenated gasoline program SIP revision.

[FR Doc. 94–27603 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–24–1–6670; FRL–5102–9]

Approval and Promulgation of Implementation Plan: Texas 1990 Base Year Ozone Emissions Inventories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA today fully approves the 1990 base year ozone emission inventories submitted by Texas for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for ozone. The inventories were submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area ozone State Implementation Plan (SIP) for the Houston/Galveston, Beaumont/Port Arthur, El Paso, and Dallas/Fort Worth areas of Texas.

EFFECTIVE DATE: This final rule is effective on December 8, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and

Information Center, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, Emissions Inventory Branch, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr., Planning Section (6T–AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7237.

SUPPLEMENTARY INFORMATION:

Background

Under the 1990 Clean Air Act Amendments (CAAA), 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 CAAA require ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce volatile organic compounds (VOC) emissions by 15 percent within six 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 to exclude 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 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 State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. 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 CAAA. The EPA has issued a General Preamble describing the EPA's preliminary views on how the EPA intends to review SIP revisions submitted under title I, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13502; April 16, 1992, and 57 FR 18070; April 28, 1992). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble (57 FR 18070, Appendix B, April 28, 1992) for a more detailed discussion of the interpretations of title I advanced in today's action and the supporting rationale.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the 1990 CAAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources by 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 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 a 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).

Emission inventories are first reviewed under the completeness criteria established under section 110(k)(1) of the CAAA (56 FR 42216, August 26, 1991). According to section 110(k)(1)(C), if a submittal does not meet the completeness criteria, "the State shall be treated as not having made the submission." Under sections 179(a)(1) and 110(c)(1), a finding by the EPA that a submittal is incomplete is one of the actions that initiates the sanctions and Federal Implementation Plan processes (see David Mobley memorandum, November 12, 1992).[1]

The State of Texas submitted the 1990 base year inventories for Houston/Galveston (HGA), Beaumont/Port Arthur (BPA), El Paso (ELP), and Dallas/Fort Worth (DFW) on November 17, 1992, as a SIP revision by cover letter from the Governor. The inventories were reviewed by the EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter dated January 15, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

The State of Texas subsequently held public hearings to entertain public comment on the 1990 base year emission inventories. The State provided evidence to EPA Region 6 that the public hearings were held and that the State responded to comments. The inventories were approved by the Texas Air Control Board (TACB) on November 10, 1993.

On September 1, 1993, the TACB merged with the Texas Water Commission to form the Texas Natural Resource Conservation (TNRCC), and is now called the Office of Air Quality within the TNRCC. The merger did not abrogate, void, or rescind any rules, regulations, orders, permits, or any other action previously taken by the former TACB.

Response to Comments

The EPA, Region 6, proposed approval of the Texas 1990 Base Year ozone emissions inventories on September 6, 1994 (59 FR 46015–46019) and received no adverse comments regarding the proposed approval. The State of Texas submitted a letter to Region 6 on September 30, 1994, which recognized a typographical error in the El Paso VOC point source emissions. The correct emissions from point sources are 9.47 tons per day instead of 11.88 tons per day and the total VOC emissions are 100.40 tons per day instead of 102.81 tons per day. The tables in this document have been corrected to reflect this change.

Final Action

In today's action, the EPA is fully approving the SIP 1990 base year ozone emission inventories submitted to the EPA for the Houston/Galveston, Beaumont/Port Arthur, El Paso, and Dallas/Fort Worth areas on November 17, 1993, as meeting the requirements of section 182(a)(1) of the Act.

The State has submitted complete inventories containing point, area, biogenic, on-road mobile, and non-road mobile source data, and accompanying documentation. Emissions from these sources are presented in the following tables:

[1] Memorandum from J. David Mobley, Chief, Emission Inventory Branch, to Air Branch Chiefs, Region I–X, "Guidance on States' Failure to Submit Ozone and CO SIP Inventories," November 12, 1992.

VOC—OZONE SEASONAL EMISSIONS

[In Tons Per Day]

NAA	Point source emissions	Area source emissions	On-Road mobile emissions	Non-Road mobile emissions	Biogenic	Total emissions
HGA	480.34	229.01	251.72	195.11	335.47	1491.65
BPA	245.60	32.48	31.61	32.47	91.95	434.11
ELP	9.47	27.43	39.00	11.88	12.62	100.40
DFW	66.64	174.25	306.60	97.44	126.09	771.02

NO_x—OZONE SEASONAL EMISSIONS

[In Tons Per Day]

NAA	Point source emissions	Area source emissions	On-Road mobile emissions	Non-Road mobile emissions	Biogenic	Total emissions
HGA	780.65	14.37	337.03	236.92	NA	1368.97
BPA	221.01	1.44	41.09	60.72	NA	324.26
ELP	33.43	2.43	36.90	15.02	NA	87.78
DFW	108.86	19.99	293.03	166.05	NA	587.93

CO—OZONE SEASONAL EMISSIONS

[In Tons Per Day]

NAA	Point source emissions	Area source emissions	On-Road mobile emissions	Non-Road mobile emissions	Biogenic	Total emissions
HGA	334.38	28.03	2412.68	1269.55	NA	4044.64
BPA	117.16	16.08	282.69	162.64	NA	578.57
LP	7.41	2.64	327.10	112.01	NA	449.16
DFW	13.33	4.47	2837.88	1116.99	NA	3972.67

Based on Region 6's review of the inventories, Texas has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual emissions in the ozone nonattainment areas.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 CAAA of November 15, 1990. The EPA has determined that this action conforms with those requirements.

This final action on the Texas 1990 Base Year emissions inventories is unchanged from the September 6, 1994, proposed approval action, other than the El Paso point source VOC correction. The discussion herein provides only a broad overview of the proposed action that the EPA is now finalizing. The public is referred to the September 6, 1994 proposed approval **Federal Register** action for a full discussion of the action that the EPA is now finalizing.

This action makes final the action proposed at 59 FR 46015–46019 (September 6, 1994). As noted elsewhere in this document, the EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from table two to table three under the processing procedures established at 54 FR 2214, January 19, 1989, and revised via memorandum from the Assistant Administrator for Air and Radiation to the Regional Administrators dated October 4, 1993.

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, in relation to relevant statutory and regulatory requirements.

Regulatory Flexibility

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 1995. 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 may not by challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order 12866

This action has been classified as a Table Three action 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 Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 26, 1994.

William B. Hathaway,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2309 is added to read as follows:

§ 52.2309 Emissions inventories.

(a) The Governor of the State of Texas submitted the 1990 base year emission inventories for the Houston/Galveston (HGA), Beaumont/Port Arthur (BPA), El Paso (ELP), and Dallas/Fort Worth (DFW) ozone nonattainment areas on November 17, 1992 as a revision to the State Implementation Plan (SIP). The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for each of these areas.

(b) The inventories are for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventories cover point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) The HGA nonattainment area is classified as Severe-17 and includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties; the BPA nonattainment area is classified as Serious and includes Hardin, Jefferson, and Orange Counties; the ELP nonattainment area is classified as Serious and includes El Paso County; and the DFW nonattainment area is classified as Moderate and includes Collin, Dallas, Denton, and Tarrant Counties.

[FR Doc. 94–27604 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 8F3649, 9F3703, 0F3880/R2088; FRL–4920–1]

RIN 2070–AB78

Pesticide Tolerances for Avermectin B_1 and its Delta-8,9–Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodities celery, tomatoes, and strawberries. This regulation to establish maximum permissible levels for residues of the insecticide was requested in petitions submitted by the Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc.

EFFECTIVE DATE: This regulation becomes effective November 8, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 8F3649, 9F3703, 0F3880/R2088], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, Crystal Mall #2, Rm. 204, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305–6100.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 28, 1994 (59 FR 49370), EPA issued a proposed rule that gave notice pursuant to petitions from from Merck Sharp & Dohme, Division of Merck & Co., Hillsborough Rd., Three Bridges, NJ 08887, that it proposed pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to establish tolerances for residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodities celery, tomatoes, and strawberries. Section 180.449(b) (40 CFR 180.449(b)) would be amended to establish a tolerance of 0.05 part per million (ppm) in or on celery, 0.02 ppm in or on strawberries, and 0.01 in or on tomatoes.

Merck & Co. (now Merck Research Laboratories) has submitted to EPA a letter stating, among other things, that the common name "abamectin B_1" that appeared in the proposal should be corrected to "abamectin" or "avermectin B_1." EPA acknowledges the error and notes that the current heading in the Code of Federal Regulations to 40 CFR 180.449 correctly states "Avermectin B_1."

There were no other comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of

the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 28, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.449, by amending paragraph (b) by revising the table therein, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Celery	0.05
Strawberry	0.02
Tomatoes	0.01

[FR Doc. 94–27653 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable

standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Walton County (Unincorporated Areas) (FEMA Docket No. 7097)	
Apalachee River:	
At State Route 186 bridge	*624
Approximately 125 feet upstream of the westbound U.S. Highway 78 bridge	*692
Maps available for inspection at the Code Enforcement Building, Courthouse Annex 1, Court Street, Monroe, Georgia.	
INDIANA	
Allen County (Unincorporated Areas) (FEMA Docket No. 7097)	
Maumee River:	
Approximately 3.7 miles downstream of U.S. Route 24	*750
Approximately 1.1 miles downstream of U.S. Route 24	*752
St. Joseph River:	
Approximately 1,600 feet upstream of confluence of Becketts Run	*768
Approximately 0.7 mile upstream of confluence of Becketts Run	*768
Maps available for inspection at the City-County Building, Room 200, One East Main Street, Fort Wayne, Indiana	
NEW HAMPSHIRE	
Bedford (Town), Hillsborough County (FEMA Docket No. 7091)	
McQuade Brook:	
Approximately 925 feet downstream of Beals Road	*241
Approximately 265 feet upstream of North Amherst Road	*292
McQuade Brook Split Flow:	
At divergence from McQuade Brook	*262
Approximately 300 feet upstream of Grafton Drive	*254
Pointer Club Brook:	
Upstream of Bach River Road	*214
Approximately 50 feet upstream of Forest Drive	*227
Maps available for inspection at the Town Manager's Office, Hillsborough County, 24 North Amherst Road, Bedford, New Hampshire.	
Gorham (Town), Coos County (FEMA Docket No. 7091)	
Peabody River:	
At downstream corporate limits	*760
Approximately 300 feet upstream of confluence of Townline Brook	*1,060
Maps available for inspection at the Gorham Town Manager's Office, 20 Park Street, Gorham, New Hampshire.	
NORTH CAROLINA	
Craven County (Unincorporated Areas) (FEMA Docket No. 7097)	
Mills Branch:	
Approximately 2,500 feet downstream of Wildlife Road–SR 1431	*9
Approximately 1,100 feet upstream of U.S. Highway 17	*17
Maps available for inspection at Craven County Planning Department, 406 Craven Street, New Bern, North Carolina.	
OKLAHOMA	
Osage County (Unincorporated Areas) (FEMA Docket No. 7091)	
Arkansas River:	
Approximately 2.0 miles downstream of U.S. Route 60	*922
At Kaw Lake Dam	*951
Bird Creek:	
Approximately 1.3 miles upstream of State Route 20	*637
Approximately 1.5 miles upstream of U.S. Route 60 and State Route 11	*823
Sand Creek:	
At county boundary approximately 0.9 mile downstream of State Route 123	*670
Approximately 1.6 miles upstream of confluence with Panther Creek	*690
Hominy Creek:	
Approximately 600 feet downstream of Texas and Pacific Railroad	*624
At confluence of Quapaw Creek	*642
Clear Creek:	
At the downstream corporate limits approximately 0.3 mile upstream of U.S. Highway 60 and State Highway 11	*820
At the upstream corporate limits approximately 0.35 mile upstream of U.S. Highway 60 and State Highway 11	*820
Delaware Creek:	
At county boundary approximately 3.7 miles downstream of County Road	*619
Approximately 5 miles upstream of county boundary at the most upstream crossing at County Road	*637
Flat Rock Creek:	
Approximately 1,200 feet downstream of confluence of Flat Rock Creek Tributary B	*648
Approximately 1,500 feet upstream of Osage Drive	*717
Quapaw Creek:	
At confluence with Hominy Creek	*643
Approximately 1.5 mile upstream of confluence of East Prong Creek	*701
Butler Creek:	
At Sunset Boulevard	*677
Approximately 5.4 miles upstream of Sunset Boulevard	*707
Rock Creek:	
At confluence with Hominy Creek	*625
Approximately 2.5 miles upstream of County Road	*643
Javine Creek:	
Approximately 600 feet downstream of 144th Street	*641
Approximately 0.7 mile upstream of 144th Street	*655
Penn Creek:	
Approximately 300 feet downstream of corporate limits	*781
Approximately 0.5 mile upstream of confluence of "B" Creek	*791
Claremore Creek:	
Approximately 150 feet downstream of Missouri-Kansas-Texas Railroad (abandoned)	*782

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At upstream corporate limits	*793
Euchee Creek:	
At downstream county boundary	*691
At confluence of Euchee Creek Tributary	*699
Euchee Creek Tributary:	
At confluence with Arkansas River	*699
Approximately 950 feet upstream of Willow Street	*719
Eliza Creek:	
At downstream county boundary	*670
At U.S. Route 60	*715
B-Creek:	
At confluence with Penn Creek	*784
Approximately 0.9 mile upstream of confluence with Penn Creek	*794
Flat Rock Creek Tributary C:	
At confluence with Flat Rock Creek Tributary B	*653
Approximately 1.3 miles upstream of confluence with Flat Rock Creek Tributary B	*689
Flat Rock Creek Tributary B:	
At confluence with Flat Rock Creek	*649
Approximately 1.5 miles upstream of confluence of Flat Rock Creek Tributary C	*696
Flat Rock Creek Tributary D:	
At confluence with Flat Rock Creek	*675
Approximately 1.6 miles upstream of confluence with Flat Rock Creek	*727
Maps available for inspection at the Osage County Soil and Land Conservation Office, 628 Kihekah, Pawhuska, Oklahoma.	
PENNSYLVANIA	
Briar Creek (Borough), Columbia County (FEMA Docket No. 7097)	
Briar Creek:	
At the upstream side of CONRAIL	*492
Approximately 1,170 feet upstream of Rittenhouse Road bridge	*512
East Branch Briar Creek:	
At the confluence with Briar Creek	*502
Approximately 0.4 mile upstream of State Route 93	*511
Maps available for inspection at the Borough Hall, RR #3, Berwick, Pennsylvania, and at 2606 West Front Street, Berwick, Pennsylvania.	
Upper Dublin (Township), Montgomery County (FEMA Docket No. 7097)	
Pine Run:	
At the confluence with Sandy Run	*172
Approximately 250 feet upstream of Dresher Town Road bridge	*232
Maps available for inspection at the Code Enforcement Office/Upper Dublin Township Building, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania.	
TEXAS	
Carrollton (City), Dallas, Denton, and Collin Counties (FEMA Docket No. 7082)	
Stream 6D–5:	
Approximately 300 feet upstream of the confluence with Hutton Branch	*494
Approximately 0.6 mile upstream of Carmel Drive	*546
Elm Fork Trinity River:	
Just downstream of Beltline Road	*440
Approximately 200 feet upstream of the confluence of Denton Creek	*446
Maps available for inspection at the City of Engineering Department, 1945 Jackson Road, Carrollton, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 1, 1994.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–27634 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–03–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; General Operating Support, Conservation Project Support

AGENCY: Institute of Museum Services, NFAH.

ACTION: Technical amendment to regulations.

SUMMARY: The Institute of Museum Services issues a technical amendment to regulations governing the audit requirement for applicants to the General Operating Support and the Conservation Project Support grant programs. The amendment raises the level of a museum's annual operating budget from $50,000 to $250,000 to be eligible to request a deferral of the submission of the audited financial statements. The amendment to the regulations implement the Museum Services Act. They state the conditions for an applicant to be eligible for a deferral of the audit requirement.

DATES: This regulation is effective November 8, 1994.

ADDRESSES: Institution of Museum Services, Room 510, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Program Director, Telephone (202) 606–8539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act" which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended in 1980, 1982, 1984, 1985 and 1990.) The purpose of the Act is stated in section 202 as follows:

It is the purpose of the Museum Services Act to encourage and assist museums in their educational role in conjunction with formal systems of elementary, secondary, and post secondary education and with programs of non-formal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Service Board and Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museum disciplines, including those relating to science, history, technology, art, zoos, and botanical gardens of the curatorial, educational, and cultural resources of the United States; and of the general public. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the

Board, to make grant under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L. 101–512 Nov. 5, 1990. The Act lists a number of illustrative activities for which grants may be made, including assisting museums to improve their operations.

The Need for the Amendment

Section 1180.11(c)(4) states that a museum that has received a prior grant from IMS must submit its audited financial statement for the last fiscal year immediately preceding the fiscal year in which application is made or the immediately preceding fiscal year. § 1180.11(c)(4) authorizes the Director to defer the audit requirement for a museum that has an annual operating Budget of $50,000 or less, exclusive of non-cash contributions.

The purpose of § 1180.11(c)(4) is to ease the burden of the audit requirement for small museums, currently those with an annual operating income of up to $50,000, exclusive of non-cash contributions. The level of operating income of a museum eligible to request a deferral has not been increased since the regulation was originally set forth in 1984. In 1990, IMS conducted a needs assessment of small museums and in the process defined small museums as those with annual operating budgets of $250,000 or less, exclusive of non-cash contributions. This technical amendment to regulation is to reflect the definition of small museums used by IMS in other grant programs and in formulating policy.

Executive Order 12866

The contents of this notice have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Director has assessed the potential costs and benefits for the standards, criteria and procedures in this notice.

The potential costs associated with the contents of this notice are those determined by the Institute to be necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these standards, criteria, and procedures, the Institute has determined that the benefits of these standards, criteria and procedures justify the costs.

The Institute has determined that the contents of this notice do not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification

The Director certified that the amendment will not have a significant economic impact on a substantial number of museums. The amendment will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, it will not have a significant economic impact on the entities affected, because it does not impose excessive regulatory burden or require unnecessary Federal supervision and because it permits a larger number of museums to seek deferral of the existing requirement regarding financial statements.

Paperwork Reduction Act of 1980

The amendment does not add any information collections requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 190–511) and provides a larger number of museums may seek deferral of the requirements of the current regulation.

List of Subjects in 45 CFR Part 1180

Government contracts, Grant programs—education, Museums, National boards, Nonprofit organizations, reporting and recordkeeping requirements, Sunshine Act.

(Catalog of Federal Domestic Assistance No 45–301 Museum Services Program).

Dated: October 11, 1994.

Diane B. Frankel,

Director, Institute of Museum Services.

The Institute of Museum Services amends subchapter E of chapter XI of title 45 of the Code of Federal Regulations as set forth below:

PART 1180—[AMENDED]

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 USC 961 et seq.

2. Section 1180.11(c)(4) is revised to read as follows:

§ 1180.11 Basic requirements which a museum must meet to be considered for funding.

* * * * *

(c) * * *

The Director is authorized to defer the audit requirement set forth in paragraph (c)(2) of this section in the case of a museum with non-federal operating income of $250,000 or less, exclusive of the value of non-cash contributions (in the fiscal period preceding the fiscal period for which the deferral is requested) if the Director finds that circumstances justify a deferral and that the grant of the deferral will not be inequitable to other applicants. A deferral may be granted only upon those conditions and in light of those assurances which the Director deems appropriate in order to ensure that the purposes of this paragraph are achieved. If the museum receives an award, the museum must submit audited financial statements no later than the end of the grant period for which the deferral is requested.

* * * * *

[FR Doc. 94–27659 Filed 11–7–94; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–158; RM–8239 and RM–8317]

Radio Broadcasting Services; Hazlehurst, Utica and Vicksburg, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 265C2 for Channel 225A at Utica, Mississippi, and modifies the license for Station WJXN(FM) to specify operation on Channel 265C2 in response to a petition and counterproposal filed by St. Pe' Broadcasting. *See* 58 FR 34025, June 23, 1993. The coordinates for Channel 265C2 at Utica are 32–04–01 and 90–20–14. To accommodate the upgrade at Utica we shall also substitute Channel 255A for Channel 265C3 at Hazlehurst, Mississippi, and modify the license for Station WMDC–FM and substitute Channel 267A for Channel 266A at Vicksburg, Mississippi, and modify the license for Station WBBV–FM. The coordinates for Channel 225A at Hazlehurst are 31–53–34 and 90–24–08. The coordinates for Channel 267A at Vicksburg are 32–21–34 and 90–50–08.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–158, adopted October 26, 1994, and released November 3, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M

Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 225A and adding Channel 265C2 at Utica, removing Channel 265C3 and adding Channel 225A at Hazlehurst, and removing Channel 266A and adding Channel 267A at Vicksburg.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27557 Filed 11–7–94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91–131; RM–7702, RM–7840 and RM–7841]

Radio Broadcasting Services; Flora and Kings, MS and Newellton, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismisses the petition filed by St. Pe' Broadcasting for reconsideration of the *Report and Order* in MM Docket No. 91–131, 57 FR 39363, August 31, 1992. St. Pe' Broadcasting, licensee of Station WJXN(FM), Channel 225A, Utica, Mississippi, was granted an upgrade to Channel 265C2 in MM Docket No. 93–158, adopted October 26, 1994. Therefore, St. Pe' Broadcasting's petition for reconsideration is now moot.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27559 Filed 11–7–94; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 59, No. 215
Tuesday, November 8, 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–147–AD]

Airworthiness Directives; Boeing Model 747–200 and –300 Series Airplanes Equipped with General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200 and –300 series airplanes. This proposal would require various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. This proposal is prompted by an investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment, which has revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by December 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–147–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–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056

Discussion

In May 1991, a Boeing Model 767 series airplane was involved in an accident in which a thrust reverser deployed inadvertently during flight. While the investigation of the accident has not revealed the cause of that deployment, it has identified a number of possible failure modes in the thrust reverser control system. Inadvertent deployment of a thrust reverser during flight could result in reduced controllability of the airplane.

The FAA and the aviation industry are conducting an in-depth investigation of the thrust reverser systems installed on various types of large transport airplanes. In particular, this investigation has focused on airplane controllability in the event of an in-flight deployment of a thrust reverser, and thrust reverser reliability in general. Based on the data gathered from this ongoing investigation, the FAA issued several airworthiness directives (AD) to require periodic inspections and tests of the thrust reverser systems on certain Boeing Model 757 and 767 series airplanes [for example, reference AD 91–20–09, amendment 39–8043 (56 FR 46725, September 16, 1991) for certain Model 757 series airplanes; and AD 92–24–03, amendment 39–8408 (57 FR 53258, November 9, 1992) for certain Model 767 series airplanes]. In addition, the FAA has issued or proposed several AD's to require an additional locking device on thrust reversers that are installed on Model 737–300/–400/–500, 757, and 767 series airplanes [for example, reference AD 94–14–02, amendment 39–8954 (59 FR 33646, June 30, 1994) for certain Model 757 series airplanes; and AD 94–16–03, amendment 39–8993 (59 FR 41229, August 11, 1994) for certain Model 767 series airplanes]. These actions were taken to enhance the level of reliability on airplane models that were determined to have unacceptable flight characteristics following an in-flight deployment of a thrust reverser.

Until now, the investigation of thrust reverser system reliability on Boeing Model 747 series airplanes has not been given as high a priority as the other Boeing models because Model 747 series airplanes have never experienced control problems as a result of an in-

flight thrust reverser deployment. Based on this long safety record and the available evidence up to this time, it has been accepted generally that all Model 747 series airplanes would be shown to be controllable throughout the flight envelope following an in-flight thrust reverser deployment.

Boeing has responded to an FAA request for further investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment. The investigation results indicate that Model 747–100, –200, –300, –400, SP, and SR series airplanes could experience certain control problems in the event of a thrust reverser deployment occurring during high-speed climb or during cruise.

In light of that information, the FAA determined that certain inspections and functional tests of the thrust reverser control and indication system on all Model 747 series airplanes, similar to those required previously for Model 757 and 767 series airplanes, are necessary as precautionary actions to provide an acceptable level of safety for Model 747 series airplanes. Subsequently, on July 13, 1994, the FAA issued AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), to require inspections and functional tests of the thrust reverser control and indication system on all Model 747–400 series airplanes.

In the preamble to the notice of AD 94–15–05, the FAA indicated that it was considering similar rulemaking action for Model 747–200 and –300 series airplanes. The FAA now has determined that such rulemaking action is indeed necessary, and this proposed AD follows from that determination. The FAA has determined that inspections and functional tests of the thrust reverser control and indication system, similar to those currently required by AD 94–15–05 for Model 747–400 series airplanes, are necessary for Model 747–200 and –300 series airplanes in order to reduce the exposure of these airplanes to potential undetected single failures in the thrust reverser control system. The presence of an undetected failure in the thrust reverser control system, in some cases, can increase the likelihood of an uncommanded thrust reverser deployment in the event of an additional thrust reverser control system failure.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, which describes procedures for various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. The alert service bulletin recommends that these initial inspections and tests be accomplished no later than 1,500 flight hours or four months after release of the service bulletin. The alert service bulletin also recommends a repetitive interval of 1,300 flight hours for tests of the center drive unit (CDU) and inspections of the bullnose seal on each thrust reverser, and a repetitive interval of 18 months for other inspections and tests of the thrust reverser control and indication system.

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 various inspections and functional tests of the thrust reverser control and indication system on certain Model 747–200 and –300 series airplanes, and would require the correction of any discrepancy found during the inspections and tests. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

This proposed AD also would require that operators submit a report of initial inspection and test results to the FAA.

In developing appropriate compliance times for the initial inspections and tests contained in this proposed AD, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the proposed actions. In consideration of these items, the FAA determined that 90 days (for the initial test of the CDU and inspection of the bullnose seal on each thrust reverser) and 9 months (for the initial inspections and tests of the thrust reverser control and indication system) represent the maximum intervals of time allowable wherein those actions can reasonably be accomplished and an acceptable level of safety can be maintained. Further, the FAA has determined that the proposed repetitive intervals of 1,000 flight hours and 18 months, respectively, are appropriate, based on the service history of similar components and on an analysis of the system design to predict the reliability of the system during the service life of the aircraft.

The compliance times proposed in this AD correspond to those specified in AD 94–15–05 for Model 747–400 series airplanes. The thrust reverser control and indication system on Model 747–400 series airplanes is similar to the system installed on the airplanes addressed in this proposed AD.

This notice addresses only Model 747–200 and –300 series airplanes equipped with General Electric CF6–80C2 series engines with Power Management Control (PMC) engine controls. The FAA may consider additional rulemaking action for other Model 747–200 and –300 series airplanes and Model 747–100, SP, and SR series airplanes as service information becomes available for accomplishment of inspections and functional tests of the thrust reverser control and indication systems on those airplanes.

There are approximately 9 Model 747–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 33 work hours per airplane 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 $3,630, or $1,815 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 94–NM–147–AD.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric CF6–80C2 series engines with Power Management Control (PMC) engine controls, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service.

(b) Within 9 months after the effective date of this AD, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

(c) If any of the inspections and/or functional tests required by this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

(d) Within 10 days after performing each initial inspection and test required by this AD, submit a report of the inspection and/or test results, both positive and negative, to the FAA, Seattle Aircraft Certification Office (ACO), ANM–100S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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

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

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

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

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27597 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–13–V

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Federal Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Federal Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Federal gas valuation pursuant to its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

DATES: The Committee will have meetings as shown below:

Tuesday, November 29, 1994—10:00 a.m.–5:00 p.m.
Wednesday, November 30, 1994—8:00 a.m.–5:00 p.m.
Thursday, December 1, 1994—8:00 a.m.–2:00 p.m.

ADDRESSES: The meetings will be held at the Denver Marriott West, 1717 Denver West Parkway, Golden, Colorado 80401, at Exit 263 from Interstate I–70, telephone (303) 279–9100.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3150, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3150, Denver, Colorado 80225–0165, telephone number (303) 275–7200, fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register.**

The meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: November 2, 1994.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 94–27594 Filed 11–7–94; 8:45 am]

BILLING CODE 4310–MR–P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Illinois regulatory program (hereinafter the "Illinois program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consisted of revisions to 23 parts of Title 62 of the Illinois Administrative Code (IAC) pertaining to permit fees, definitions, financial interests, coal exploration, permitting, environmental resources, reclamation plans, special categories of mining, small operator assistance, bonding, performance standards, inspection, enforcement, civil penalties, administrative and judicial review, and certification of blasters. Illinois is withdrawing this amendment because it needs more time to complete additional revisions prior to formal review by OSM.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION: By letter dated September 23, 1994 (Administrative Record No. IL–1600), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to an August 5, 1993, letter (Administrative Record No. IL–1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to required program amendments at 30 CFR 913.16 (s), (t), (u), and (v), and at its own initiative.

On October 18, 1994 (Administrative Record No. IL–1605), OSM announced receipt of and solicited public comment on the proposed amendment in the **Federal Register** (59 FR 52487). On October 25, 1994 (Administrative Record No. IL–1607), Illinois requested that the proposed amendment be withdrawn. Illinois intends to revise the amendment prior to resubmitting it for formal review and approval by OSM. Therefore, the proposed amendment announced in the October 18, 1994, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 28, 1994.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–27628 Filed 11–7–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD05–94–088]

RIN 2115–AA98

Anchorage Regulations; Anchorage Grounds: Anchorage 7 off Marcus Hook; Delaware River, Southeast Side of the Channel Along Marcus Hook Range

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the boundaries of Anchorage 7 off Marcus Hook on the southeast side of the channel along the Marcus Hook Range of the Delaware River. There currently exists a discrepancy between the charted anchorage, the Army Corps of Engineers maintained anchorage, and the anchorage coordinates published in 33 CFR 110.157(a)(8). This proposal will correct all discrepancies.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawford Street, Portsmouth, VA, Room 116. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Tom Flynn, Assistant Chief, Planning and Waterways Management Section, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004, (804) 398–6285.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD05–94–088) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed because of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are LCDR Tom Flynn, project officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District and LT Andy Norris, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

Section 7 of the Act of March 4, 1915, as amended (33 U.S.C. 471), authorizes the establishment of anchorage grounds for vessels in the navigable waters of the United States whenever it is apparent that such grounds are required by the maritime or commercial interests of the United States for safe navigation. A Coast Guard initiated Waterways Analysis and Management System Study (WAMS) of the Delaware River, conducted in 1989, determined that a discrepancy exists between the charted anchorage, the Army Corps of Engineers maintained anchorage, and the anchorage coordinates published in 33 CFR 110.157(a)(8). WAMS was developed to serve as the basis for a systematic analysis and management of the aids to navigation in our nation's waterways. WAMS is intended to identify the navigational needs of the users of a particular waterway, the present adequacy of the aids system in terms of those needs, and what is required in those cases where the users' needs are not being met. The WAMS process also looks into the resources—physical, financial, and personnel—needed to carry out the Aids to Navigation program responsibilities. The analyses of each waterway and the attendant resources are then integrated to provide documentation for both day to day management and future planning within the Aids to Navigation program. Anchorage 7, off Marcus Hook, as defined in 33 CFR 110.157(a)(8), does not correctly delineate the anchorage as currently maintained by the Army Corps of Engineers nor as charted by the National Ocean Service. The preferential area in this anchorage designated for the use of vessels awaiting quarantine inspection is vaguely defined and may not provide adequate room for modern, large vessels. This proposal will correct those discrepancies. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The basis for this finding is that Anchorage 7 is already being utilized within the boundaries set forth in this proposal.

Small Entities

Under 5 U.S.C. 601 *et seq.*, known as the Regulatory Flexibility Act, the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this proposal is expected to be minimal, the Coast Guard will certify under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it is anticipated that this proposed rulemaking will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475 1B. It has been determined that a Categorical Exclusion Determination statement is not required (see 59 FR 38654, July 29, 1994).

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is proposed to be amended as follows:

PART 110--[REVISED]

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

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.157 is amended by revising paragraph (a)(8) to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(a) * * *

(8) *Anchorage 7 off Marcus Hook.* (i) On the southeast side of the channel along Marcus Hook Range, bounded by a line connecting the following points:

Latitude	*Longitude*
39°49'17.254" N	75°22'50.0994" W
39°48'39.984" N	75°23'17.238" W
39°47'45.309" N	75°25'01.278" W
39°47'43.111" N	75°26'00.186" W

(DATUM: NAD 83)

(ii) A vessel that is arriving from or departing for sea and that requires an examination by public health, customs, or immigration authorities shall anchor in the preferential area of this anchorage designated for the use of vessels awaiting quarantine inspection, this area being the waters bounded by the arc of a circle with a radius of 366 yards and with the center located at:

Latitude	*Longitude*
39°48'46.334" N	75°23'26.881" W

(DATUM: NAD 83)

(iii) Should the remainder of the anchorage be in use, the preferential area, when available, may be used by vessels not subject to quarantine inspection.

* * * * *

Dated: October 24, 1994.

W.J. Ecker,

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

[FR Doc. 94–27669 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–M

33 CFR Part 117

[CGD08–94–026]

RIN 2115–AE47

Drawbridge Operation Regulation; Red River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: With the completion of locks and dams 4 and 5 in December 1994 by the U.S. Army Corps of Engineers, the Red River will be open for commercial navigation in January 1995. The present regulation requiring all bridges up to mile 177.9, to open on signal with at least 48-hours advance notice, would severely restrict the movement of prospective commercial navigation on the waterway and would create a burden on the bridge owners. The anticipated vessel count for calendar year 1995 is approximately 370, but is expected to increase significantly for calendar year 1996. At the request of the Red River Valley Association, the Coast Guard is considering a change to the regulation governing the operation of six drawbridges across the Red River located between mile 59.5 and mile 105.8. Bridges located between mile 105.8 and mile 234.4 will remain on 48-hours advance notice. Bridges located above mile 234.4 need not be opened for the passage of vessels. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before December 23, 1994.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. As a result of the imminent completion of the locks and dams on the Red River allowing commercial navigation by January 1995, only 45 days are being allowed for comments to ensure a final rule is published in time to be effective.

Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES:** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

With the completion of locks and dams 4 and 5 in December 1994, by the U.S. Army Corps of Engineers, the Red River will be open for commercial navigation in January 1995. As a result of that project, the mileage of the Red River has changed. All mileages referred to in this regulation are post-project mileages. The entire stretch of the Red River flowing through Louisiana is presently regulated by Section 117.135, which is cross referenced in Section 117.491. With the finalization of this regulation, the Red River in Louisiana will be governed by § 117.491. Section 117.135 will be amended in the near future to reflect this change. The present regulation requiring all bridges up to mile 177.9 to open on signal with at least 48-hours advance notice would severely restrict the movement of prospective commercial navigation on the waterway. Thus, the reason for the proposed rule change. The anticipated vessel count for calendar year 1995 is approximately 370, but is expected to increase significantly in year 1996. Existing operating regulations for bridges from mile 105.8 to the Arkansas border at approximately mile 276 remain unchanged.

Discussion of Proposed Rules

Six bridges in Louisiana across the Red River are affected by the proposed rules:

(1) The Louisiana Department of Transportation (LDOTD), vertical lift span bridge, mile 59.5 on SR LA 107, at Moncla, Louisiana.

(2) The Kansas City Southern Railroad swing span bridge, mile 88.0, at Alexandria, Louisiana.

(3) The LDOTD vertical lift span bridge, mile 88.1, on SR 28 (Fulton Street), at Alexandria, Louisiana.

(4) The LDOTD vertical lift span bridge, mile 88.6, on US 165 (Jackson Street), at Alexandria, Louisiana.

(5) The Union Pacific Railroad swing span bridge, mile 90.1, at Alexandria, Louisiana.

(6) The LDOTD swing span bridge, mile 105.8, on SR 8, at Boyce, Louisiana.

All of these drawbridges will be required to open on signal for passage of vessels with at least 8 hours advance notice.

An exception to the 8 hours notice requirement exists for two of the bridges, the Kansas City Southern Railroad swing span bridge, mile 88.0, at Alexandria, and the Louisiana Department of Transportation and Development (LDOTD) vertical span bridge, mile 88.6, on US 165 (Jackson Street), at Alexandria.

For openings of the Kansas City Southern Railroad swing span bridge at mile 88.0, on a Saturday or Sunday (or Monday if it is a federal holiday), notice must be given by 4 p.m. on the Friday afternoon prior to the desired draw opening. Additionally, when a federal holiday falls on a weekday, for openings on that holiday, notice must be given by at least 4 p.m. on the day prior to the holiday. Mariners can request an opening of the draw by calling 1–800–227–7028 at any time. This opening schedule is temporary. A new highrise railroad bridge is under construction and is scheduled to be completed in mid-1995. At that time, the old railroad drawbridge will be removed from the waterway.

As for the LDOTD vertical span bridge, mile 88.6, on US 165, the draw will not be required to open between the hours of 7 and 9 a.m., and from 4 to 6 p.m., Monday through Friday, excluding holidays. The purpose of this closure is to allow rush hour vehicular traffic to cross the bridge. Data provided by LDOTD show that approximately 2070 vehicles cross the bridge between 7 and 9 a.m. and approximately 2300 vehicles cross the bridge between the hours of 4 and 6 p.m. During the past 12 months approximately 123 vessels passed the bridge. That breaks down to about 10 per month or about 1 vessel every three days.

Mariners can request an opening of the draws of the LDOTD bridges located at river miles: 59.5, 88.1, 105.8 and 177.9 by calling 1–800–542–3509 at any time. Openings of the Union Pacific Railroad swing span bridge, mile 90.1, at Alexandria, can be requested by calling (402) 636–7442 at any time.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g)(3); section 117.255, also issued under the authority of Pub. L. 102–587, 102 Stat. 5039.

2. Section 117.491 is revised to read as follows:

§ 117.491 Red River.

(a) The draws of the following bridges shall be opened on signal if at least eight hours notice is given:

(1) S107 bridge, mile 59.5, at Moncla,

(2) S28 (Fulton Street) bridge, mile 88.1, at Alexandria,

(3) Union Pacific Railroad bridge, mile 90.1, at Alexandria,

(4) S8 bridge, mile 105.8, at Boyce.

(b) The Kansas City Southern Railroad bridge, mile 88.0, at Alexandria shall open on signal if at least eight hours notice is given; except that, for openings on Saturday or Sunday and Monday if it is a federal holiday, notice must be given for an opening of the draw by 4 p.m. on Friday; and in the event a federal holiday falls during a weekday other than Monday, notice must be given by 4 p.m. the day prior to that holiday.

(c) The draw of the US 165 (Jackson St.) bridge, mile 88.6, at Alexandria, shall open on signal if at least eight hours notice is given; except that, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. the draw need not be opened Monday through Friday except holidays.

(d) The draws of the bridges from mile 105.8 through mile 234.4 shall open on signal if at least 48 hours notice is given.

(e) The draws of the bridges from mile 234.4 to mile 276 need not be opened for passage of vessels.

(f) When a vessel which has given notice fails to arrive at the time specified in the notice, the drawtender shall remain on duty for up to two additional hours to open the draw if that vessel appears. After that time, a new notice of the appropriate length of time is required.

Dated: October 24, 1994.

R.C. North,

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

[FR Doc. 94–27676 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD05–94–076]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Scotts Hill, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations that govern the operation of the Figure Eight Island swingbridge, across the Atlantic Intracoastal Waterway, mile 278.1, located in Scotts Hill, North Carolina, by restricting recreational vessels to bridge openings every half hour. This change is being considered due to the increased volume of vehicular traffic crossing this bridge. The proposed changes to these regulations are, to the extent practicable and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection or copying at room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–076) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. if it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Bill H. Brazier, Project Officer, and LCDR C. A. Abel, Project Attorney, Fifth Coast Guard District.

Background and Purpose

The Figure Eight Beach Homeowners Association, Inc. has requested that openings of the swingbridge across the Atlantic Intracoastal Waterway, mile 278.1, located in Scotts Hill, North Carolina, be restricted for recreational vessels due to the increase in vehicular traffic. Currently, this bridge opens on signal at all times. The Coast Guard is proposing to reduce the required bridge openings for recreational vessels from "on demand" to every half hour. The bridge will continue to open on signal at all other times for all other vessels.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and

Budget under that order. it is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In Section 117.821, paragraph (b)(4) and (5) are redesignated as (b)(5) and (6) respectively and new paragraph (b)(4) is added to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach.

* * * * *

(b) * * *

(4) Figure Eight Swing Bridge, mile 278.1, at Scotts Hill, NC, must open if signaled on the hour and half hour.

* * * * *

Dated: October 18, 1994.

M.K. Cain,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 94–27671 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD07–94–094]

RIN 2115–AE48

Regulated Navigation Area; Tampa Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulations requiring certain vessels to make security broadcasts when approaching or reaching reporting points within Tampa Bay. The required security broadcasts are expected to minimize the hazards associated with navigation in Tampa Bay and enhance safety by making vessel operators aware of the movements of other vessels in the area. This action proposes to establish permanent regulations governing vessel security broadcasts previously followed on a voluntary basis. Required participation in the security broadcast program will help prevent collisions. A permanent rule will provide the widest availability possible to the public and maritime community.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Comments should be mailed to Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, FL 33606–3598. The comments and other materials referenced in this notice will be available for inspection and copying at 155 Columbia Drive, Tampa, FL. telephone (813) 228–2189. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade K.R. Slotten, Coast Guard Marine Safety Office Tampa at (813) 228–2189.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD07–94–094] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The proposed rules may be changed in light of the comments received. The Coast Guard plans no public hearing, but one may be held if written requests for a hearing are received. The requests should include reasons why a hearing would be beneficial. If a determination is made that the opportunity to make oral presentations will aid the rulemaking process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of the notice are Lieutenant Commander Janet B. Gammon, project officer, Coast Guard Marine Safety Office Tampa, and Lieutenant Jacqueline M. Losego, Seventh Coast Guard District Legal Office.

Discission of Proposed Regulations

As the result of marine casualties occurring in the Tampa Bay entrance channels, the Greater Tampa Bay Marine Advisory Council has proposed that the existing voluntary security broadcast program established in the Coast Pilot be made mandatory. This security broadcast program gives masters, pilots, and persons in charge of vessels real-time information on the density of marine traffic in Tampa Bay as required by 33 CFR 164.11(p)(5). The security broadcast program also supplements the Vessel Bridge to Bridge Radiotelephone Regulations contained in 33 CFR 26. The Captain of the Port has determined that these requirements are necessary to reduce the likelihood of

any adverse incidents while transiting Tampa Bay. The chance of a collision will be further minimized by requiring masters, pilots or persons in charge of all vessels over 50 meters in length to make security broadcasts when approaching or reaching the broadcast/report points specifically listed under "Proposed Regulations."

Nothing in these procedures would supersede the Navigation Rules or relieve the Master or person in charge of a vessel of responsibility for the safe navigation of the vessel.

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The security broadcast system has been followed on a voluntary basis by primary users for at least five (5) years, and all vessels affected are required by 33 CFR 26 to have radiotelephone equipment.

Since the impact of this is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), has determined this action to be categorically excluded from further environmental documentation. A Categorical Exclusion has been prepared in accordance with Section 2.B.2.c. of COMDTINST M16475.1B, NEPA Implementing Procedures.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.753 is added to read as follows:

§ 165.753 Tampa Bay, FL; Regulated Navigation Area.

(a) *Location.* The following is a regulated navigation area (RNA): All of the navigable waters of Tampa Bay, Hillsborough Bay and Old Tampa Bay, including all navigable waterways tributary thereto. Also included, are the waters of Egmont Channel, Gulf of Mexico, from Tampa Bay to the sea buoy, Tampa Bay Lighted Whistle Buoy T. LLNR 18465.

(b) *Regulations.* The master, pilot, or person in charge of any vessel of 50 meters or greater in length shall give a security broadcast on VHF–FM Channel 13 at the broadcast/reporting points listed below:

(1) Prior to getting underway from any berth or anchorage.

(2) Prior to entering Egmont Channel from seaward.

(3) Prior to passing Egmont Key in any direction;

(4) Prior to transiting the Sunshine Skyway Bridge in either direction;

(5) Prior to transiting, in any direction, the intersection of Tampa Bay Cut F Channel, Tampa Bay Cut G Channel and Gadsden Point Cut Channel;

(6) Prior to anchoring or approaching a berth for docking.

(7) Prior to tending hawser.

(8) Prior to passing Point Pinellas Channel Light 1 in either direction.

(c) Each security call required by this section shall be made in the English language and will contain the following information:

(1) Name of vessel;

(2) If engaged in towing, the nature of the tow;

(3) Present location;

(4) Direction of Movement; and,

(5) The nature of any hazardous conditions as defined by 33 CFR 160.203.

(d) Nothing in these regulations shall supersede either the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules, as applicable, or relieve the Master or person in charge of a vessel of responsibility for the safe navigation of the vessel.

Dated: October 18, 1994.

P.J. Cardaci,

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

[FR Doc. 94–27673 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–94–153]

RIN 2115–AA97

Safety Zone; South Street Seaport, New Years Eve Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposed to establish a temporary safety zone for a fireworks program located in the East River, New York. If adopted, this event will take place from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995. This proposed regulation would close all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. This safety zone would preclude all vessels from transiting this portion of the East River and is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

DATES: Comments must be received on or before December 8, 1994.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Planning and Readiness Division, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Planning and Readiness Division at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. Trabocchi, Planning and Readiness Division Officer, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30-day comment period is deemed to be sufficiently reasonable, notice to all interested persons. Since this proposed rulemaking is neither complex nor

technical, a longer comment period is deemed to be unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–94–153) and the specific section of the proposal to which their comments apply, and given reasons for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Planning and Readiness Division at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

South Street Seaport, Inc., submitted an application to hold a fireworks program in the waters of the East River, New York, between Pier 16, Manhattan and Pier 1, Brooklyn. If adopted, this regulation would establish a temporary safety zone in the waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995. This safety zone would preclude all vessels from transiting this portion of the East River and is needed to protect boaters from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. If adopted, this safety zone will close a portion of the East River to all vessel traffic between 11:30 p.m. on December 31, 1994, and 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made to the affected maritime community to allow for the scheduling of transits before and after the event; and that pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

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

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–153, is added to read as follows:

§ 165.T01–153 Safety Zone; South Street Seaport, New Years Eve Fireworks, East River, NY.

(a) *Location.* All waters of the East River, New York, south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period.* This section is effective from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Coast Guard, Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: October 27, 1994.

T. H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–27670 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300366; FRL–4919–4]

RIN 2070–AC18

Pesticide Tolerances for 2,3–Dihydro-2,2–Dimethyl-7–Benzofuranyl-N-Methylcarbamate

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a time-limited tolerance for residues of the insecticide 2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate (common name "carbofuran") and its metabolites in or on canola at 1.00 part per million (ppm) with an expiration date of 2 years after the beginning of the effective date of a final rule based on this proposal. EPA is issuing this proposal on its own initiative.

DATES: Comments, identified by the document control number, [OPP–300366], must be received on or before December 8, 1994.

ADDRESSES: Comments may be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20604. In person, bring comments to: Rm. 1128, CM #2, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by the EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given below, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305–6386.

SUPPLEMENTARY INFORMATION: On its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA is proposing a time-limited, regionally restricted tolerance for the residues of carbofuran on canola at 1.00 ppm. EPA is proposing the tolerance because at the present time, canola treated with carbofuran may not be processed in the U.S. and must be exported to Canada. There are currently three Special Local Need registrations under section 24(c) of the Federal Insecticide Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c). Registrations will be regionally restricted to Idaho, Minnesota, Montana, North Dakota, and Washington.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A 2-year chronic feeding/oncogenicity study in the rat with a no-observed-effect level (NOEL) of 1.0 milligram (mg)/kilogram (kg) of body weight (bwt) per day (20 ppm) for cholinesterase-inhibition (CHE) and systemic effects, negative for oncogenic effects at the levels tested (0, 10, 20, and 100 ppm).

2. A 2-year chronic feeding/oncogenicity study in the mouse with a NOEL of 3.0 mg/kg bwt/day (20 ppm) for CHE, a NOEL of 18.75 mg/kg bwt/day (125 ppm) for systemic effects, and negative for oncogenic effects at all levels tested (0, 20, 125, and 500 ppm).

3. A 1-year dog feeding study with a NOEL of 0.5 mg/kg (20 ppm).

4. A three-generation rat reproduction study with a NOEL of 1.0 mg/kg (20 ppm).

5. Two rat teratology studies which were negative for teratogenic effects at up to 1.2 mg/kg bwt/day and 160 ppm and NOEL's for fetotoxicity of 1.2 mg/kg and 60 ppm.

6. A rabbit teratology study which was negative for teratogenic and fetotoxic effects at 2.00 mg/kg and mutagenicity testing which showed carbofuran not to be mutagenic.

There is no cancer risk associated with the use of this chemical. Carbofuran has not been shown to produce carcinogenic effects in two species.

The reference dose (RfD), based on a 1-year dog feeding study with a NOEL of 0.5 mg/kg bwt/day and an uncertainty factor of 100, is calculated to be 0.005 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from the current tolerances is 0.005183 mg/kg/day. The percent reference dose (RfD) for the overall U.S. population is 104%, for nonnursing infants it is 263%, and for children, ages 1–6, it is 238%. The proposed tolerance will add 0.000077 mg/kg/day to the TMRC and 1.5% to the overall RfD. The dietary risk from all uses of carbofuran is overestimated since it was assumed that all residues are at tolerance level (anticipated residues were not used) and 100% of all crops were treated. Before any additional permanent tolerances will be considered, the RfD must be refined by use of anticipated residues and realistic percent crop treated values. The Agency will not establish any new tolerances for carbofuran until the TMRCs for the overall U.S. population and its subgroups are below the reference dose.

The tolerance would be established for 2 years, with an expiration date of 2 years after the beginning of the effective date of a final rule based on this proposal. The Interregional Research Project No. 4 (IR–4) is currently conducting new residue trials and plans to submit a petition for a permanent tolerance in early 1995. However, because of the known hazard to carbofuran to birds and wildlife, EPA will not establish a permanent tolerance until the Agency has fully evaluated risks to wildlife.

The nature of the residue in plants and animals is adequately understood for the purposes of this time-limited tolerance. Adequate analytical methods for enforcement are available in the Pesticide Analytical Manual, Volume II (PAM II). Carbofuran, per se, is recovered under FDA's multiresidue protocols A and D.

This pesticide is considered useful for the purposes for which the tolerance is sought. Based on the above information considered by the Agency, the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with FFDCA section 408(e).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear notation indicating the document control number, [OPP–300366]. All written comments filed in response to this document will be available in the Public Docket and Freedom of Information Section, at the address

given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 27, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.254, by adding new paragraph (c), to read as follows:

§ 180.254 2,3–Dihydro-2,2-dimethyl-7-benzofuranyl-N-methylcarbamate; tolerances for residues.

* * * * *

(c) A time-limited tolerance (of 2 years) with regional registration, as defined in § 180.1(n), is established for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite-2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the following raw agricultural commodity:

Commodity	Parts per million
Canola (of which no more than 0.2 ppm is carbamate)	1.00

[FR Doc. 94–27704 Filed 11–3–94; 4:47 pm]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5090–9]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to delete Kent City Mobile Home Park Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 announces its intent to delete the Kent City Mobile Home Park Site ("the Kent City Site") from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action to delete the Kent City Site from the NPL is proposed because EPA, in consultation with the State of Michigan, has determined that no further remedial action under CERCLA is appropriate at the Site.

DATES: Comments concerning the proposed deletion of the Kent City Site from the NPL may be submitted by December 8, 1994.

ADDRESSES: Comments may be mailed to: Betty G. Lavis, Remedial Project Manager (HSRW–6J); Waste Management Division; Remedial Response Branch WI/MI; U.S. Environmental Protection Agency, Region 5; 77 West Jackson Boulevard; Chicago, IL 60604–3590.

FOR FURTHER INFORMATION CONTACT: Betty G. Lavis, Remedial Project Manager, at (312) 886–4784; or Derrick Kimbrough, Community Relations Coordinator at (312) 886–9749 or toll-free at (800) 621–8431, 9 a.m. to 4:30 p.m. Central Time.

SUPPLEMENTARY INFORMATION: Comprehensive information on the Kent City Site is available for public review in the docket EPA Region 5 has prepared, which contains the documents and information EPA reviewed in the decision to propose to delete the Kent City Site from the NPL. The docket is available for public review during normal business hours at the EPA docket room and at the Kent City Library located at 43 South Main Street in Kent City, Michigan. To obtain copies of documents in the docket contact Betty G. Lavis, Remedial Project Manager, at (312) 886–4784 or Derrick Kimbrough, Community Relations Coordinator at (312) 886–9749 or toll-free at (800) 621–8431.

Table of Contents

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Kent City Mobile Home Park Site ("the Kent City Site") from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and requests public comment on this action.

The EPA identifies sites that may 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 Response Trust Fund (Fund) or responsible parties. Pursuant to 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for further Fund-financed responses, and for re-listing on the NPL, if conditions at the site ever warrant such action.

The EPA will accept comments concerning the proposal to delete the Kent City Site from the NPL for thirty (30) days after publication of this notice in the **Federal Register.**

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further responses under CERCLA are appropriate. In making this determination, EPA typically considers: whether responsible or other parties have implemented all appropriate response actions; whether all appropriate Fund-financed responses under CERCLA have been implemented and no further response action by responsible parties is appropriate; or whether the release of hazardous substances poses no significant threat to public health or the environment, thereby eliminating the need for remedial action.

Prior to deciding to delete a site, EPA must first determine that the remedy, or existing site conditions at the sites where no action is required, is protective of public health, welfare, and the environment. In addition, § 300.425(e)(2) of the NCP provides that

no site shall be deleted from the NPL until the state in which the site is located has concurred on the proposed deletion.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.42(e)(3) provides that whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the hazard ranking system (HRS).

Deletion of sites from the NPL does not in itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

The NCP, at 40 CFR 300.425(e), specifies the procedures to be followed in deleting sites from the NPL. It directs that notice and an opportunity to comment must be given before deleting sites from the NPL. By this notice, EPA notifies the public of its intent to delete the Kent City Site from the NPL and will accept comments from the public on this proposal for a period of thirty (30) days after the date of publication in the **Federal Register.**

EPA will accept and evaluate public comments before making a final decision, and will address them in a Responsiveness Summary, if necessary, which EPA will place in the docket for this decision. If, after consideration of these comments, EPA decides to proceed with the deletion, EPA will publish a Notice of Deletion in the **Federal Register.** In addition, the following procedures are being used for the intended deletion of the Kent City Site:

(1) The State of Michigan has concurred with this decision to conduct No Further Action at the Kent City Site.

(2) Concurrent with this Notice of Intent to Delete, a local notice will be published in the local newspaper and will be distributed to appropriate federal, state and local officials and other interested parties. This local notice will specify a 30-day public comment period.

(3) The Region has made all relevant documents available in the Regional Office and local site information repository.

IV. Basis for the Intended Deletion of the Kent City Site

The Kent City Site is a 2-acre mobile home park located in Kent City, in west-central Michigan. In December of 1982, sampling of the 65-foot deep drinking water supply well located in the mobile home park revealed the presence of volatile organic compounds. In January and October of 1983, the contaminated well was replaced with two 130-foot wells five hundred feet west and upgradient of the contaminated well. In November of 1983, the State of Michigan placed the Site on the Michigan Act 307 List.

The source of the release, discovered in April of 1984, was a buried 55-gallon storage drum upgradient of the well. The storage drum collected floor drainage from a dry cleaning facility that formerly operated at the site. The drum and surrounding soil were removed and the area backfilled with clean soil.

In April and May of 1984, the Michigan Department of Public Health (MDPH) sampled the four monitoring wells and twenty-nine nearby private wells. No contamination was detected in any of these wells. The new water supply wells are sampled every three years by MDPH; results have consistently shown no detectable contaminants. Once the source was removed and groundwater sampling showed no evidence of contamination, the State of Michigan delisted the site from their Michigan Act 307 List in November of 1985.

EPA continued to evaluate the site and, based on contaminant levels and routes of exposure present before the removal, placed it on the NPL on July 21, 1987. No further activities were undertaken by EPA until April 20, 1994, when EPA performed another round of groundwater sampling. The results showed no detectable contaminants.

Following the 1994 sampling and after completing an evaluation of all available data for the Site, EPA concluded that previous removal activities and construction of an alternative water supply at the site have eliminated existing and potential risks to human health and the environment such that no further action was required. Historical and recent sampling events indicated that the contamination was localized and there are no longer any health risks from site-related contaminants present in the groundwater, soil, or in nearby Ball Creek.

A Proposed Plan recommending no further action and subsequent deletion of the Site was distributed for public comment from July 1 to August 1, 1994. The Proposed Plan noted that the source of the contamination was removed; subsequent groundwater and surface water sampling events that included the monitoring wells, the two new water supply wells, and Ball Creek Drain, have not revealed the presence of contaminants that exceed any state or federal drinking water standards or criteria. It also noted that carbon tetrachloride above federal maximum contaminant levels for drinking water is still present in the old water supply well but appears to be having no impact on the ground water or surface water. The Proposed Plan recommended that the contaminated well, which is not available as a water source, be properly abandoned and grouted.

A Record of Decision (ROD) was signed on September 13, 1994 which approved the "No Action" remedy.

The State of Michigan concurred with the No Action remedy on September 6, 1994.

Dated: September 26, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94-27647 Filed 11-7-94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7116]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of

the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Orange (Town), New Haven County.	Race Brook	Approximately 0.14 mile upstream of Orange Center Road.	*107	*108
			At upstream corporate limits (approximately 0.6 mile upstream of State Route 114).	None	*172

Maps available for inspection at the Department of Public Works, Town Hall, 617 Orange Center Road, Orange, Connecticut.

Send comments to Ms. Dorothy L. Berger, First Selectman for the Town of Orange, Town Hall, 617 Orange Center Road, Orange, Connecticut 04677.

Georgia	Gainesville (City), Hall County.	Flat Creek	At upstream of State Route 13	None	*1,166
			At upstream corporate limits	None	*1,172
		Flat Creek Tributary	At confluence with Flat Creek	None	*1,171
			Approximately 170 feet upstream of Pine Street.	None	*1,195
		Limestone Creek	At upstream side of Limestone Road.	None	*1,089
			At upstream corporate limits	None	*1,109
			At upstream corporate limits	None	*1,109
		Limestone Creek Tributary.	At confluence with Limestone Creek.	None	*1,089
			At Downstream side of Brenau Lake Dam.	None	*1,115

Maps available for inspection at the Joint Administration Building/Public Works Department, 300 Green Street, Room 302, Gainesville, Georgia.

Send comments to The Honorable John Morroy, Mayor of the City of Gainesville, Hall County, P.O. Box 2496, Gainesville, Georgia 30503

Indiana	Monroe County (Unincorporated).	Jacks Defeat Creek	Approximately 0.7 mile downstream of Harbison Road.	None	*695

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.3 mile upstream of CSX Transportation Railroad.	None	*768
		Tributary One	At confluence with Jacks Defeat Creek.	None	*707
			Approximately 0.7 mile upstream of Nursery Road.	None	*779

Maps available for inspection at the Monroe County Courthouse, Courthouse Square, Bloomington, Indiana.

Send comments to Mr. Tim Tilton, President of the Monroe County Commission, County Courthouse, Room 322, Courthouse Square, Bloomington, Indiana 47404.

Maine	Skohegan (Town), Somerset County.	Kennebec River	At downstream Corporate limits	*126	*127
			At Approximately 1.6 miles upstream of the confluence of Whitten Brook.	*165	*174
		Wesserunsett Stream.	At confluence with Kennebec River	*130	*132
			Approximately 800 feet upstream of confluence with West Branch Wesserunsett Stream.	*159	*160
		West Branch Wesserunsett Stream.	At confluence with Wesserunsett Stream.	None	*159
			Approximately 1,900 feet upstream of State Route 150.	None	*218
		Cold Brook	At confluence with West Branch Wesserunsett Stream.	None	*180
			At confluence of Unnamed Brook	None	*225
		Currier Brook	At confluence with Kennebec River	*153	*159
			At the downstream crossing of Bigelow Hill Road.	*223	*224
		Unnamed Brook	At confluence with Cold Brook	None	*225
			Approximately 360 feet upstream of Private Drive.	None	*267
		Whitten Brook	At confluence with Kennebec River	*162	*173
			At downstream face of culvert near Whitten Court.	*171	*173
		Kennebec River (North Channel).	At confluence with Kennebec River	*153	*159
			At divergence from Kennebec River.	*162	*173

Maps available for inspection at the Town Office Building, Planning Department, 90 Water Street, Skohegan, Maine.

Send comments to Ms. Patricia Dickey, Skohegan Town Manager, Somerset County, 90 Water Street, Skohegan, Maine 04976.

Mississippi	Marion (Town), Lauderdale County.	Sowashee Creek	Approximately 0.8 mile upstream of confluence of Nanabe Creek.	*345	*344
			Approximately 1.3 miles upstream of U.S. Highway 45 Bypass.	*373	*372

Maps available for inspection at the Marion Town Hall, 6021 Dale Drive, Marion, Mississippi.

Send comments to The Honorable Malcom Threatt, Mayor of the Town of Marion, P.O. Box 35 Marion, Mississippi 39342.

New Jersey	Allendale (Borough), Bergen County.	Ho-Ho-Kus Brook	Approximately 75 feet upstream of the confluence of Allendale Brook (downstream corporate limits).	*236	*238
			Approximately 2,300 feet upstream of the confluence of Valentine Brook (upstream corporate limits).	*299	*298
		Allendale Brook	Approximately 850 feet downstream of New Street.	*247	*248
			Upstream corporate limits (approximately 1.2 miles upstream of Franklin Turnpike).	None	*281
		Ramsey Brook	At confluence with Ho-Ho-Kus Brook.	*257	*255
			Approximately 550 feet upstream of Lake Side Drive.	None	*353

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Valentine Brook	Approximately 150 feet upstream of confluence with Ho-Ho-Kus Brook.	*293	*292
			Approximately 3,500 feet upstream of Forest Drive (upstream corporate limits).	*326	*325

Maps available for inspection at the Allendale Borough Hall, 500 West Crescent Avenue, Allendale, New Jersey.

Send comments to The Honorable Albert H. Klomburg, Mayor of the Borough of Allendale, 500 West Crescent Avenue, Allendale, New Jersey 07401.

New Jersey	Alpine (Borough), Bergen County.	Husdon River	Upstream corporate limits	None	*8
			Downstream corporate limits	None	*9

Maps available for inspection at the Alpine Borough Hall, 100 Church Street, Alpine, New Jersey.

Send comments to The Honorable Walter A. Duke, Mayor of the Borough of Alpine, 100 Church Street, Alpine, New Jersey 07620.

New Jersey	Carlstadt (Borough), Bergen County.	Newark Bay	At intersection of State Route 17 and Bread Street.	None	*8

Maps available for inspection at the Borough Hall, 500 Madison Street, Carlstadt, New Jersey.

Send comments to The Honorable Dominick Presto, Mayor of the Borough of Carlstadt, 500 Madison Street, Madison Street, Carlstadt, New Jersey 07620.

New Jersey	East Rutherford (Borough), Bergen County.	Newark Bay	At intersection of State Route 17 and Orchard Street.	None	*8

Maps available for inspection at the Borough Hall, 1 Everett Place, East Jersey.

Send comments to The Honorable James L. Plosia, Mayor of the Borough of East Rutherford, 1 Everett Place, East Rutherford, New Jersey 07073.

New Jersey	Englewood Cliffs (Borough), Bergen County.	Hudson River	Upstream corporate limits	None	*9
			Downstream corporate limits	None	*9

Maps available for inspection at the Municipal Building, 10 Kahn Terrace, Englewood Cliffs, New Jersey.

Send comments to The Honorable Joseph C. Parisi, Mayor of the Borough of Englewood Cliffs, 10 Kahn Terrace, Englewood Cliffs, New Jersey 07632–2986.

New Jersey	Fair Lawn (Borough), Bergen County.	Saddle River	Approximately 1,750 feet downstream of Red Mill Road.	*44	*45
			Approximately 300 feet downstream of the confluence of Ho-Ho-Kus Brook.	*57	*56

Maps available for inspection at the Borough of Fair Lawn, Municipal Building, 8–01 Fair Lawn Avenue, Fair Lawn, New Jersey.

Send comments to Mr. Bertrard N. Kendall, Borough Manager, 8–01 Fair Lawan Avenue, Fair Lawn, New Jersey 07410.

New Jersey	Fort Lee (Borough), Bergen County.	Husdon River	Upstream corporate limits	None	*9
			Downstream corporate limits	None	*10

Maps available for inspection at the Code Enforcement Office, 309 Main Street, Fort Lee, New Jersey.

Send comments to The Honorable Jack Alter, Mayor of the Borough of Fort Lee, 309 Main Street, Fort Lee, New Jersey 07024.

New Jersey	Franklin Lakes (Borough), Bergen County.	Pond Brook	At downstream corporate limits	*324	*326
			Approximately 40 feet downstream of High Mountain Road.	*325	*326
		Ho-Ho-Kus Brook	Downstream of Wyckoff Avenue (downstream corporte limits).	*311	*307
			Approximately 120 feet downstream of Edison Road.	*312	*311

Maps available for inspection at the Building Department, DeKorte Drive, Franklin Lakes, New Jersey.

Send comments to The Honorable William J. Vichiconti, Mayor of the Borough of Franklin Lakes, Municipal Building, DeKorte Drive, Franklin Lakes, New Jersey 07417.

New Jersey	Glen Rock (Borough), Bergen County.	Ho-Ho-Kus Brook	At confluence with Saddle River ...	*55	*57
		Saddle River	Approximately 1,700 feet downstream of the confluence of Ho-Ho-Kus Brook.	*54	*56
			At the confluence with Ho-Ho-Kus Brook.	*55	*57

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Borough of Glen Rock, Borough Hall, Harding Plaza, Glen Rock, New Jersey. Send comments to The Honorable Jacqueline Kort, Mayor of the Borough of Glen Rock, Harding Plaza, Glen Rock, New Jersey 07652.					
New Jersey	Hackensack (City), Bergen County.	Coles Brook	At Main Street	None	*15
			At Essex Street	None	*39
Maps available for inspection at the City Office, 65 Central Avenue, Hackensack, New Jersey. Send comments to The Honorable John F. Zisa, Mayor of the City of Hackensack, 65 Central Avenue, Hackensack, New Jersey 07601.					
New Jersey	Hackensack Meadowlands District, Bergen County.	Overpeck	Approximately 800 feet north of intersection of Victoria Terrace and Hendricks Causeway.	*9	*7
Maps available for inspection at the HMDC Engineering Department, 1 De Korte Park Plaza, Lyndhurst, New Jersey. Send comments to Mr. Anthony Sacrdino, Jr., Executive Director, 1 De Korte Park Plaza, Lyndhurst, New Jersey 07071.					
New Jersey	Harrington Park (Borough), Bergen County.	Oradell Reservior	At upstream corporate limits (approximately 0.5 mile upstream of Harrington Avenue).	*25	*28
			At upstream face of CONRAIL bridge.	*25	*26
Maps available for inspection at the Harrington Park Borough Hall, 85 Harriot Avenue, Harrington Park, New Jersey. Send comments to The Honorable Paul A. Hoelscher, Mayor of the Borough of Harrington Park, Municipal Center, 85 Harriot Avenue, Harrington Park, New Jersey 07640.					
New Jersey	Hasbrouck Heights (Borough), Bergen County.	Newark Bay	Approximately 200 feet southeast of intersection of Ravine Avenue and State Route 17.	None	*5
Maps available for inspection at the Borough Clerk's Office, 248 Hamilton Avenue, Hasbrouck Heights, New Jersey. Send comments to The Honorable Rose Marie Heck, Mayor of the Borough of Hasbrouck Heights, 248 Hamilton Avenue, Hasbrouck Heights, New Jersey 07604–1898.					
New Jersey	Ho-Ho-Kus (Borough), Bergen County.	Saddle Brook	At East Saddle River Road	*93	*92
			At Mills Road	*158	*159
		Saddle River	Approximately 900 feet downstream of Bogert Road.	*92	*91
			At a point approximately 1,350 feet upstream of Hollywood Avenue (upstream corporate limits.	*103	*105
Maps available for inspection at the Ho-Ho-Kus Borough Hall, 333 Warren Avenue, Ho-Ho-Kus, New Jersey. Send comments to The Honorable Richard M. Sayers, Mayor of the Borough of Ho-Ho-Kus, 333 Warren Avenue, Ho-Ho-Kus, New Jersey 07423.					
New Jersey	Little Ferry (Borough), Bergen County.	Newark Bay	Along East Riser Ditch south of intersection of Huyler Street and U.S. Route 46.	None	*5
Maps available for inspection at the Borough Hall, One Katherine Street, Little Ferry, New Jersey. Send comments to The Honorable Louis A. Tedesco, Jr., Mayor of the Borough of Little Ferry, One Katherine Street, Little Ferry, New Jersey 07643–1800.					
New Jersey	Lodi (Borough), Bergen County.	Saddle River	Approximately 640 feet upstream of Outwater Lane.	*38	*37
			At Market Street (Essex Street)	*40	*39
Maps available for inspection at the Lodi Municipal Building, One Memorial Drive, Lodi, New Jersey. Send comments to The Honorable Philip V. Toronto, Mayor of the Borough of Lodi, Municipal Building, One Memorial Drive, Lodi, New Jersey 07644.					
New Jersey	Mahwah (Township) Bergen County.	Ho-Ho-Kus Brook	Approximately 140 feet downstream of Edison Road.	*312	*311
			Approximately 100 feet upstream of the confluence of Valentine Brook.	*292	*293
		Valentine Brook	Approximately 150 feet upstream of confluence with Ho-Ho-Kus Brook.	*293	*292

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 3,800 feet upstream of Forest Drive (at the upstream corporate limits).	*322	*321
		Darlington Brook Tributary.	Approximately 2,480 feet downstream of Shadyside Road.	None	*329
			Approximately 3,180 feet downstream of Shadyside Road.	None	*329
		Masonicus Brook	West side of CONRAIL at Mahwah/Ramsey corporate limits.	None	*331
			East side of CONRAIL at Mahwah/Ramsey corporate limits.	None	*332

Maps available for inspection at the Municipal Building, 300 B Route 17 South, Mahwah, New Jersey.

Send comments to The Honorable David Dwork, Mayor of the Township of Mahwah, 300 B Route 17 South, Mahwah, New Jersey 07430.

New Jersey	Maywood (Borough), Bergen County.	Coles Brook	Downstream corporate limits	None	*26
			At Essex Street	None	*39

Maps available for inspection at the Borough of Maywood, 459 Maywood Avenue, New Jersey.

Send comments to The Honorable William O. Schwanewede, Borough Engineer, P.O. Box 626, Teaneck, New Jersey 07666.

New Jersey	Moonachie (Borough), Bergen County.	Newark Bay	At intersection of West Park and Albert Streets.	None	*9
			North of intersection of Moonachie Avenue and Moonachie Road.	None	*5

Maps available for inspection at the Municipal Building, 70 Moonachie Road, Moonachie, New Jersey.

Send comments to The Honorable Frederick J. Dressel, Mayor of the Borough of Moonachie, 70 Moonachie Road, Moonachie, New Jersey 07074–1199.

New Jersey	North Arlington (Borough), Bergen County.	Newark Bay	Approximately 800 feet east of intersection of Schuyler Avenue and Carrie Road.	None	*9
			Approximately 400 feet east of intersection of Schuyler Avenue and Eckhardt Terrace.	None	*8

Maps available for inspection at the Borough Hall, 214 Ridge Road, North Arlington, New Jersey.

Send comments to The Honorable Leonard R. Kaiser, Mayor of the Borough of North Arlington, 214 Ridge Road, North Arlington, New Jersey 07031.

New Jersey	Old Tappan (Borough), Bergen County.	Hackensack River	At downstream corporate limits (approximately 1,200 feet downstream of Westwood Avenue).	*30	*26
			At upstream face of Lake Tappan Dam.	*58	*56
		Lake Tappan	Entire shoreline within community .	*58	*56
		Dorotockeys Run	At downstream corporate limits (approximately 1,480 feet downstream of Central Avenue).	*41	*44
			Approximately 400 feet downstream of Central Avenue.	*43	*44

Maps available for inspection at the Old Tappan Borough Hall, 227 Old Tappan Road, Old Tappan, New Jersey.

Send comments to The Honorable Edward J. Gallagher, Mayor of the Borough of Old Tappan, 227 Old Tappan Road, Old Tappan, New Jersey 07675.

New Jersey	Palisades Park, (Borough), Bergen County.	Wolf Creek	Approximately 240 feet upstream of Maple Avenue.	None	*57
			Approximately 410 feet upstream of Maple Avenue.	None	*65

Maps available for inspection at the Building Inspector's Office, 275 Broad Avenue, Palisades Park, New Jersey.

Send comments to The Honorable William Maresca, Mayor of the Borough of Palisades Park, 275 Broad Avenue, Palisades Park, New Jersey 07650.

New Jersey	Paramus (Borough), Bergen County.	Sprout Brook	Downstream corporate limits (approximately 270 feet downstream of Roosevelt Avenue).	*42	*43
			Approximately 1,200 feet downstream of State Route 4.	*42	*43

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Paramus Borough Hall, Engineer's Office, Jockish Square, Paramus, New Jersey.					
Send comments to The Honorable Cliff Gennarelli, Mayor of the Borough of Paramus, Borough Hall, Jockish Square, Paramus, New Jersey 07652.					
New Jersey	Ramsey (Borough), Bergen County.	Valentine Brook	Downstream corporate limits	*322	*321
			At confluence of Valentine Brook Tributary No. 2.	*330	*331
		Ramsey Brook	Approximately 325 feet downstream of Lakeside Drive.	*338	*341
			Just downstream of Lakeside Drive.	*342	*343
		Valentine Brook Tributary 2	At confluence with Valentine Brook	*330	*331
			Approximately 10 feet downstream of East Oak Street.	*330	*331
Maps available for inspection at the Borough of Ramsey, Engineering Department, 33 North Central Avenue, Ramsey, New Jersey.					
Send comments to The Honorable John L. Scerbo, Mayor of the Borough of Ramsey, 33 North Central Avenue, Ramsey, New Jersey 07446–1897.					
New Jersey	Ridgewood (Village), Bergen County.	Ho-Ho-Kus Brook	Approximately 250 feet upstream of Dam No. 2.	*205	*206
			Approximately 950 feet upstream of Dam No. 2.	*209	*208
Maps available for inspection at the Village of Ridgewood Department of Public Works, Engineering Division, 131 North Maple Avenue, Ridgewood, New Jersey.					
Send comments to Mr. Rodney H. Irwin, Village Manager, 131 North Maple Avenue, Ridgewood, New Jersey 07450–3287.					
New Jersey	River Vale (Township), Bergen County.	Cherry Brook	At confluence with the Hackensack River.	*42	*41
			Approximately 500 feet downstream of Popular Road.	*42	*41
		Hackensack River	Approximately 600 feet downstream of Westwood Avenue.	*27	*26
			Approximately 1,250 feet downstream of Old Tappan Road.	*39	*38
Maps available for inspection at the River Vale Town Hall, 406 Rivervale Road, River Vale, New Jersey.					
Send comments to The Honorable Walter V. Jones, Mayor of the Township of River Vale, 406 Rivervale Road, River Vale, New Jersey 07675.					
New Jersey	Rutherford (Borough), Bergen County.	New Bay	Approximately 450 feet east of intersection of State Route 17 and Pierrepont Avenue.	None	*8
Maps available for inspection at the Rutherford Municipal Building, 176 Park Avenue, Rutherford, New Jersey.					
Send comments to The Honorable Andrew E. Bertone, Mayor of the Borough of Rutherford, Municipal Building, 176 Park Avenue, Rutherford, New Jersey 07070.					
New Jersey	Saddle River (Borough), Bergen County.	Saddle River	Approximately 1,350 feet upstream of Hollywood Avenue (downstream corporate limits).	*104	*105
			Approximately 2,150 feet downstream of Lower Cross Road.	*111	*113
Maps available for inspection at the Saddle River Municipal Building, 100 East Allendale Road, Saddle River, New Jersey.					
Send comments to The Honorable Theodore E. Anthony, Mayor of the Borough of Saddle River, 100 East Allendale Road, Saddle River, New Jersey 07458–3096.					
New Jersey	South Hackensack (Township), Bergen County.	Saddle River	At the CONRAIL bridge	*18	*19
			At downstream side of River Drive	*18	*19
Maps available for inspection at the Township Hall, 227 Phillips Avenue, South Hackensack, New Jersey.					
Send comments to The Honorable Angelo Cerbo, Mayor of the Township of South Hackensack, 227 Phillips Avenue, South Hackensack, New Jersey 07606–1600.					
New Jersey	Teaneck (Township), Bergen County.	Metzlers Creek	At West Hudson Avenue	*59	*57

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 60 feet upstream of West Hudson Avenue.	*59	*58

Maps available for inspection with Mr. Howarth Gilmore, Township Engineer, Municipal Building, 818 Teaneck Road, Teaneck, New Jersey.

Send comments to Mr. Gary Saage, Manager of the Township of Teaneck, Municipal Building, 818 Teaneck Road, Teaneck, New Jersey 07666–4599.

New Jersey	Tenafly (Borough), Bergen County.	Hudson River	Upstream corporate limits	None	*9
			Downstream corporate limits	None	*9

Maps available for inspection at the Tenafly Building Department, 401 Tenafly Road, Tenafly, New Jersey.

Send comments to The Honorable Walter W. Hemberger, Mayor of the Borough of Tenafly, 401 Tenafly Road, Tenafly, New Jersey 07670–2085.

New Jersey	Waldwick (Borough), Bergen County.	Allendale Brook	At confluence with Ho-Ho-Kus Brook.	*236	237
			Approximately 850 feet downstream of New Street (at the upstream corporate limits).	None	*247
		Ho-Ho-Kus Brook	Approximately 60 feet downstream of Dam No. 3.	*229	*228
			Approximately 1,500 feet upstream of the confluence of Allendale Brook (upstream corporate limits).	*247	*246
		Saddle River	Approximately 1,350 feet upstream of Hollywood Avenue.	*103	*105
			Approximately 2,150 feet downstream of Lower Cross Road (upstream corporate limits).	*111	*113

Maps available for inspection at the Borough Clerk's Office, 15 East Prospect Street, Waldwick, New Jersey.

Send comments to Mr. Gary Kratz, Waldwick Borough Administrator, 15 East Prospect Street, Waldwick, New Jersey 07463.

New Jersey	Washington (Township), Bergen County.	Pine Brook	Approximately 230 feet upstream of confluence with Musquapsink Brook.	*61	*60
			Approximately 160 feet upstream of Ridegewood Boulevard North.	*85	*86

Maps available for inspection at the Town Clerk's Office, 350 Hudson Avenue, Washington, New Jersey.

Send comments to The Honorable Rudolph J. Wenzel, Jr., Mayor of the Township of Washington, 350 Hudson Avenue, Washington, New Jersey 07675–4799.

New Jersey	Wood-Ridge (Borough), Bergen County.	Newark Bay	At intersection of Blum Boulevard and Union Street.	None	*8

Maps available for inspection at the Borough Hall, 85 Humboldt Street, Wood-Ridge, New Jersey.

Send comments to The Honorable Paul Calocino, Mayor of the Borough of Wood-Ridge, 85 Humboldt Street, Wood-Ridge, New Jersey 07075.

New Jersey	Wyckoff (Township), Bergen County.	Ho-Ho-Kus Brook	Approximately 2,300 feet upstream of confluence of Valentine Brook (downstream corporate limits).	None	*298
			Approximately 50 feet downstream of Wyckoff Avenue.	None	*307
		Ho-Ho-Kus Brook Tributary.	Approximately 550 feet downstream of Old Post Road (at downstream corporate limits).	None	*320
			Approximately 20 feet upstream of Clinton Avenue.	None	*341
		Goffle Brook	Approximately 75 feet downstream of Newtown Road.	*268	*269
			Approximately 150 feet upstream of Carlton Road.	None	*349
		Demarest Avenue Tributary.	At confluence with Goffle Brook	*288	*289
			Approximately 100 feet upstream of Jacqueline Drive	None	*318
		Deep Voll Brook	At county boundary	*204	*205
			Approximately 1,000 feet upstream of Sicomac Avenue.	None	*417

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Township Engineer's Office, Memorial Town Hall—Scott Plaza, Wyckoff, New Jersey.					
Send comments to The Honorable Anthony Avia, Mayor of the Township of Wyckoff, Memorial Town Hall—Scott Plaza, Wyckoff, New Jersey 07481.					
New York	Ellicottville (Town), Cattaraugus County.	Holiday Valley Creek	Approximately 1,025 feet downstream of Chessie System.	None	*1,521
			At the upstream crossing of Holiday Valley Road	None	*1,649
		Shallow Flooding Area.	Between Chessie System and U.S. Route 219.	None	#2
		South of intersection of U.S. Route 219 and Holiday Valley Road.	None		#2
Maps available for inspection at the Town Hall, 1 West Washington, Ellicottville, New York.					
Send comments to Mr. John Widger, Supervisor for the Town of Ellicottville, P.O. Box 610, Ellicottville, New York 14731.					
Ohio	Highlands Heights (City), Cuyahoga County.	Tributary C	Approximately 300 feet upstream of Leverett Road.	*935	*936
			Approximately 0.3 mile downstream of Highland Road	*941	*943
Maps available for inspection at Steven Hovancek & Associates, 2 Merit Drive, Richmond Heights, Ohio					
Send comments to The Honorable Virginia Swanson, Mayor of the City of Highland Heights, Cuyahoga County, 5827 Highland Road, Highland Heights, Ohio 44143.					
Pennsylvania	Derry (Township), Westmoreland County.	Loyalhanna Creek	Approximately 0.9 mile downstream of Ligonier Street.	None	*970
			Approximately 0.4 mile downstream of Ligonier Street	None	*970
		McGee Run	Approximately 420 feet downstream of North Ligonier Street.	*1,131	*1,130
			Approximately 270 feet downstream of North Ligonier Street.	*1,134	*1,133
		Garlane Mills Run	At a point approximately 1,110 feet upstream of West 5th Avenue.	None	*1,291
			At a point approximately 1,080 feet upstream of West 5th Avenue.	None	
Maps available for inspectin at the Derry Township Municipal Building, 650 Derry Road, Derry, Pennsylvania.					
Send comments to Mr. Lon Sinemus, Chairman of the Derry Township Board of Supervisors, 650 Derry Road, Derry, Pennsylvania 15627.					
Pennsylvania	Donora (Borough), Washington County.	Monongahela River	At approximately 0.72 mile downstream of Donora-Webster bridge (10th Street) (downstream, corporate limits).	None	*758
			At approximately 1,100 feet upstream of Donora-Monesson bridge, (upstream coporate limits).	None	*760
Maps available for inspection at the Donora Municipal Complex—Administrative Office, 603 Meldon Avenue, Donora, Pennsylvania.					
Send comments to Mr. Robert G. Paraschak, Manager for the Borough of Donora, 603 Meldon Avenue, Donora, Pennsylvania 15033.					
Pennsylvania	Fallowfield (Township), Washington County.	Monongahela River	Downstream corporate limits	None	*761
			Upstream corporate limits (approximately 1,000 feet downstream of the North Charleroi bridge)	None	*761
Maps available for inspection at the Fallowfield Township Building, 9 Memorial Drive, Fallowfield, Pennsylvania.					
Send comments to Mr. Donn Henderson, Secretary for the Township of Fallowfield, 9 Memorial Drive, Charleroi, Pennsylvania 15022.					
Pennsylvania	Jefferson (Township), Fayette County.	Monongahela River	At the downstream corporate limits	None	*767
			At the upstream corporate limits	None	*774
		Redstone Creek	At the confluence with Monongahela River	None	*774
			Approximately 0.83 mile upstream of CONRAIL bridge.	None	*774

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Jefferson Township Building, Rural Route 2, Jefferson, Pennsylvania.					
Send comments to Mr. Larry L. Stuckslager, Supervisor for the Township of Jefferson, R.D. 2, Box 142 B, Perryopolis, Pennsylvania 15473.					
Pennsylvania	Monongahela (Township), Greene county.	Monongahela River ..	At the confluence of Little Whiteley Creek.	None	*794
			At the confluence of Dunkard Creek	None	*805
Maps available for inspection at the Jefferson Township Building, Rural Route 2, Jefferson, Pennsylvania.					
Send comments to Mr. Anthony Corso, President of the Township of Monongahela Board of Supervisors, R.D. 1, Box 77–C, Greensboro, Pennsylvania 15338.					
Pennsylvania	Orange (Township), Columbia County.	Fishing Creek	Approximately 280 feet downstream of State Route 487.	*582	*581
			Approximately 0.46 mile upstream of State Route 487.	*590	*591
Maps available for inspection at the Township Municipal Building, By appointment—call Suzanne Moore (717) 683–5554.					
Send comments to Mr. John Buck, Supervisor of the Township of Orange, R.D. 2, Box 0045, Orangeville, Pennsylvania 17859.					
Tennessee	Hendersonville (City), Sumner County.	Drakes Creek	Approximately 1.31 miles upstream of Gallatin Pike.	*516	*460
			At the downstream side of Long Hollow Pike.	*516	*515
		Drakes Creek, Right Bank Tributary No. 2.	Approximately 50 feet upstream of Louisville and Nashville Railroad.	*456	*455
			Approximately 0.20 mile upstream of Forest Retreat Road	*523	*522
		Drakes Creek, Right Bank, Tributary No. 3.	At confluence with Drakes Creek ..	*466	*467
			Approximately 0.15 mile upstream of Goshen Town Road.	None	*527
		Drakes Creek, Left Bank, Tributary No. 1.	At confluence with Drakes Creek ..	*464	*466
			At upstream side of Stop Thirty Road	None	*533
		Drakes Creek, Unnamed Tributary.	At confluence with Drakes Creek, Right Bank, Tributary No. 1.	*451	*452
			Approximately 0.29 mile upstream of Wessington Place.	None	*522
Maps available for inspection at the Hendersonville City Hall, One Executive Park Drive, Hendersonville, Tennessee.					
Send comments to The Honorable R. J. Thompson, Mayor of the City of hendersonville, City Hall, One Executive Park Drive, P.O Box 1570, Hendersonville, Tennessee 37077–1570.					
West Virginia	Monongalia (County), (Unincorporated Areas).	Dents Run	Approximately 200 feet downstream of Dents Run Boulevard.	None	*818
			Approximately 0.46 mile upstream of Dents Run Boulevard	None	*836
		Monongahela River ..	At the downstream county boundary (West Virginia State boundary).	*807	*809
			At the upstream county boundary .	*861	*862
		Cobun Creek	Approximately 1,360 feet upstream of confluence with Monogahela River.	None	*824
			Approximately 1,740 feet upstream of confluence with Monongahela River.	None	*830
Maps available for inspection at the Office of Emergency Management, University of West Virginia, Health Science Center, Room G252A, Morgantown, West Virginia.					
Send comments to Ms. Elizabeth M. Martin, President of the Monongahela County Commission, 243 High Street, Morgantown, West Virginia 26505.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 1, 1994.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–27635 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Foreign Proposals to Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to CITES. Any country that is a Party to CITES may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces decisions by the Fish and Wildlife Service (Service) on negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States. The proposals will be considered at the ninth regular meeting of the Conference of the Parties (COP9) to be held in Fort Lauderdale, Florida, November 7–18, 1994. It also announces a deadline for public recommendations regarding potential reservations that should be taken by the United States on any listing decisions by the Parties at COP9.

DATES: Proposals mentioned in this notice are scheduled to be discussed along with preliminary votes by Party countries in committee on the weekdays from approximately November 9 to 15, 1994. Final votes in plenary sessions are likely on November 16 and 17, 1994, without discussion unless one-third of the Parties support the reopening of discussion on specific proposals. Any of these proposals that are adopted will enter into effect 90 days after the close of COP9 (i.e., on February 16, 1995). Public comments regarding potential reservations to be taken by the United States on listings adopted by the Parties at COP9 need to be received by the Service's Office of Scientific Authority by January 17, 1995.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, D.C. 20240. The fax number is (703) 358–2276. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Comments and other information received are available for public inspection by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. telephone: (703) 358–1708; fax: (703) 358–2276.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless the trade is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those other species). Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

Any Party country may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting. Proposals submitted to the Secretariat are subsequently distributed to all Parties. After preliminary review of proposals received for consideration at COP9, the Service announced the proposals and invited comments on tentative negotiating positions in the September 6, 1994, **Federal Register** (59 FR 46023).

This notice announces the negotiating positions to be taken by the United States delegation on proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties. The decisions announced in this notice represent formal guidance to the delegation. Although it is neither practical nor in the best interests of the United States to establish inflexible negotiating positions, the delegation will seek to obtain agreement of the Conference of the Parties with these positions unless new information becomes available (see Summary of Positions).

Report of the Nomenclature Committee

The Nomenclature Committee, in conjunction with the World Conservation Monitoring Centre, has been working to review and resolve numerous ambiguities in the appendices that arose from the listing of taxa at the plenipotentiary and first meetings of the Conference of the Parties. Supporting documents were not a matter of record at these initial meetings; similar names may have had more than one interpretation, or the scientific name used may not have been the preferred or commonly accepted name. The Nomenclature Committee has submitted a list of such clarifications for consideration by the Parties at COP9. These include (a) the addition of taxonomic authority references for all Appendix I species included in the appendices prior to 1977, (b) revision of various spellings and the addition of taxonomic notes to certain Appendix I species included in the appendices prior to 1977, and (c) changes in some names of listed taxa in accordance with the latest taxonomic revision. The United States supports these changes except for the name changes recommended for unionid mussels, because those names are inconsistent with the U.S List of Endangered and Threatened Wildlife. The report also identifies taxa that require such substantial taxonomic clarification that a regular amendment to the appendices is warranted. A copy of this report is available from the Office of Scientific Authority (see Addresses).

Comments Received

Public meetings held on September 14 and 16, 1994, provided opportunities for comments from organizations and the general public on the tentative positions

published in the September 6, 1994, **Federal Register** (59 FR 46023). These meetings were attended by 48 non-Federal-government individuals, representing 27 non-government organizations, three embassies, one news service, and one private business. Some of these attendees did not comment, and some followed up their verbal comments with written statements. Twelve additional organizations provided only written comments during the comment period on species proposals.

With respect to proposals on animal listings, 15 non-government organizations and one private individual provided substantive written comments, and three additional organizations provided oral comments only. Most of the animal proposals received comment from at least one organization. Norway's minke whale proposal (eight comments) and South Africa's elephant proposal (nine comments) generated the most interest, followed by the leopard cat, black-crowned crane, Goffin's cockatoo, and black caiman (five comments each). Although there were few comments on the box turtle listing proposal from the Netherlands, a similar proposal from the United States generated considerable public comment.

Written comments on plant species were received from 12 organizations, 17 commercial businesses, five members of Congress, two foreign governments, one foreign government agency, three specialists in certain aspects of plants, and over 300 members of the general public; no organization provided only oral comments. Proposals on timber-tree species and succulents received the most comments, and no comments were received regarding orchids and some of the medicinal species.

The Service has prepared a summary of public comments entitled "Assessment of Comments on Species Listing Proposals," which includes notes on the negotiating positions of the United States. The separate development of this document, in keeping with past practice of the Service, allows for more timely and less expensive publication in the **Federal Register**. Although biological and trade information received from individuals and organizations after the comment period expired is not referenced in this document, all such information was considered on the basis of its scientific and/or quantitative merit. The "Assessment of Comments on Species Listing Proposals" is available upon request from the Office of Scientific Authority.

Summary of Positions

As a consequence of (a) careful review and analysis of public comments and (b) new information that has become available from a variety of other sources since publication of tentative positions in the earlier **Federal Register** (59 FR 46023), some positions have been changed. Seven changes involve animal listing proposals. Four of these (related to tinamous, Udzungwa forest partridge, black-crowned crane, and black caiman) were made as a result of reviewing new information. Three (related to the Tanzanian Nile crocodile, tuataras, and Asian bonytongue fish) were made to clarify the U.S. position in cases where the original proposals contained ambiguities. Four changes involve plant listing proposals and were made as a result of receiving new information on *Pachypodium brevicaule, Berberis aristata, Coptis teeta,* and *Dactylanthus taylorii.*

The negotiating positions presented in the following table are based upon (a) the best available biological and trade information available to the Service at this time, (b) the criteria for listing species in the Appendices (Conf. 1.1 and 1.2 of the first meeting of the Conference of Parties to the Convention, as interpreted by past listing discussions and actions of the Parties), and (c) other provisions for listing species, including Conf. 2.19 on extremely rare species, Conf. 2.23 and Conf. 3.20 on delistings under special 10-year review procedures, Conf. 3.15 and 8.22 on ranching, Conf. 5.14 on uplisting plant species, Conf. 5.21 and 7.14 on special criteria for the transfer of taxa from Appendix I to Appendix II with concurrent establishment of export quotas, and Conf. 2.12 and 8.15 on captive-breeding facilities. Rationale for (and/or commentary on) each current position is presented in footnotes referenced in the table. In some cases, only the rationale for a position has changed from that presented in the previous notice. The bases for some positions, particularly those that have changed since the previous notice, are further explained in the separate "Assessment of Comments on Species Listing Proposals."

Although this notice sets forth the negotiating positions of the United States at COP9, new information that becomes available during a COP can often lead to modifications in positions. Support or opposition to particular proposals may depend on whether certain questions about them are answered satisfactorily at the meeting. At COP9, the U.S. delegation will disclose all position changes and the rationale for them.

Species	Proposed amendment	Proponent	U.S. position
Mammals:			
Order Chiroptera.			
Acerodon jubatus (Golden-capped fruit bat)	Transfer from II to I	Philippines	Support.[1]
Acerodon lucifer (Panay giant fruit bat)	Transfer from II to I	Philippines	Support.[1]
Order Edentata.			
Euphractus spp. (Armadillos)	Add to II	Chile	Oppose.[2]
Order Pholidota.			
Manis spp. (Pangolins)	Add to II	Switzerland	Support.[3]
Manis temminckii (Cape pangolin)	Transfer from I to II	Switzerland	Support.[4]
Order Rodentia.			
Chinchilla spp. (Chinchillas)	Remove from I (domesticated specimens in South America).	Chile	Oppose.[5]
Order Cetacea.			
Balaenoptera acutorostrata (Minke whale)	Transfer from I to II (Northeast Atlantic and the North Atlantic central stocks).	Norway	Oppose.[6]
Order Carnivora.			
Felis bengalensis bengalensis (Leopard cat)	Transfer from I to II	Switzerland	Support.[1,7]
Hyaena brunnea (Brown hyena)	Transfer from I to II	Switzerland	Support.[1]
Conepatus spp. (Hog-nosed skunks)	Add to II	Chile	Oppose.[8]
Ailurus fulgens (Red panda)	Transfer from II to I	Netherlands	Support.[1]
Order Proboscidea.			

Species	Proposed amendment	Proponent	U.S. position
Loxodonta africana (African elephant)	Transfer from I to II (South Africa's population)	South Africa	Under review.[9]
Loxodonta africana (African elephant)	Transfer from I to II (Sudan's population)	Sudan	Oppose.[10]
Order Perissodactyla.			
Ceratotherium simum simum (White rhinoceros)	Transfer from I to II (South Africa's population)	South Africa	Oppose.[11]
Order Artiodactyla.			
Megamuntiacus vuguanghensis (Giant muntjac)	Add to I	Vietnam	Support.[1]
Pseudoryx nghetinhensis (Vu Quang Ox)	Add to I	Denmark	Support.[1]
Vicugna vicugna (Vicuna)	Transfer from I to II (remaining Peruvian Appendix I populations).	Peru	Oppose.[12]
Vicugna vicugna (Vicuna)	Amend annotation for Appendix II populations to allow the trade in wool sheared from live vicuñas.	Chile	Support.[13]
Hippopotamus amphibius (Hippopotamus)	Add to II	Belgium, Benin, and France.	Support.[1]
Birds:			
Order Apterygiformes.			
Apteryx spp. (Kiwis)	Add to I	New Zealand	Support.[1,3]
Order Tinamiformes.			
Rhynchotus rufescens maculicollis (Red-winged tinamou).	Remove from II	Uruguay	Support.[4]
Rhynchotus rufescens pallescens (Southern red-winged tinamou).	Remove from II	Uruguay	Support.[4]
Rhynchotus refescens rufescens (Western red-winged tinamou).	Remove from II	Uruguay	Support.[4]
Order Anseriformes.			
Anas aucklandica (currently listed as *Anas aucklandica aucklandica*).	Transfer from II to I	New Zealand	Support.[14]
Anas chlorotis (currently listed as *Anas aucklandica chlorotis*).	Transfer from II to I	New Zealand	Support.[14]
Anas nesiotis (currently listed as *Anas aucklandica nesiotis*).	Retain in I	New Zealand	Support.[14]
Order Galliformes.			
Xenoperdix udzungwensis (Udzungwa forest partridge).	Add to I	Denmark	Support.[1]
Order Gruiformes.			
Balearica pavonina (Black-crowned crane)	Transfer II to I	Netherlands	Support.[1,3]
Order Psittaciformes.			
Cacatua goffini (Goffin's cockatoo)	Transfer from I to II	Indonesia	Oppose.[15]
Eos histrio (Red and blue lory)	Transfer from II to I	Indonesia	Support.[1]
Cyanoramphus malherbi (Orange-fronted parakeet)	Transfer from II to I	New Zealand	Support.[16]
Cyanoramphus novaezelandiae (New Zealand or Red-crowned parakeet).	Transfer I to II	New Zealand	Oppose.[17]
Psittacus erithacus princeps (African gray parrot)	Transfer from I to II	United Kingdom.	Support.[4]
Psittacus erithacus (Sao Tome/Principe populations of African gray parrot).	Retain in I in lieu of *Psittacus erithacus princeps*	United Kingdom.	Support.[18]
Order Cuculiformes.			
Musophagidae spp. (Turacos)	Add to II	Netherlands	Support.[3]
Order Apodiformes.			
Collocalia spp. (Edible-nest swiftlets)	Add to II	Italy	Support.[1]
Order Passeriformes.			
Agelaius flavus (Saffron-cowled blackbird)	Add to I	Uruguay	Support.[1]
Reptiles:			
Order Crocodylia.			
Melanosuchus niger (Black caiman)	Transfer from I to II (Ecuador's population pursuant to Conf. 3.15 on ranching).	Ecuador	Oppose.[19]
Crocodylus niloticus (Nile crocodile)	Change basis of maintenance of Malagasy population on II from Conf. 7.14 to Conf. 3.15.	Madagascar	Oppose.[20]
Crocodylus niloticus (Nile crocodile)	Change basis of maintenance of South Africa's population on II from Conf. 7.14 to Conf. 3.15.	South Africa	Support.[21]
Crocodylus niloticus (Nile crocodile)	Transfer from II to I (Madagascar and Somalia populations..	Switzerland	Support.[22]
Crocodylus niloticus (Nile crocodile)	Maintain in II with significant increase in export quota pursuant to Conf. 7.14.	Tanzania	Oppose.[23]
Crocodylus porosus (Saltwater crocodile)	Change basis of maintenance of Indonesia population on II from Conf. 7.14 to Conf. 3.15.	Indonesia	Oppose.[20]
Crocodylus porosus (Saltwater crocodile)	Transfer from II to I (Indonesian population)	Switzerland	Support.[22]
Crocodylus porosus (Saltwater crocodile)	Change basis of maintenance of Australian population on II from Conf. 3.15 to Conf. 1.2.	Australia	Support.[1]
Order Testudinata.			
Lissemys puncata (Indian flap-shelll turtle)	Add to II	Switzerland	Support.[1]
Lissemys punctata punctata Indian flap-shell turtle)	Remove from I	Switzerland	Support[4,24]
Terrapene spp. (Box turtles)	Add to II (retain *T. coahuila* in I)	Netherlands	Support.[25]
Testudo kleinmanni (Egyptian tortoise)	Transfer from II to I	Egypt	Support.[26]

Species	Proposed amendment	Proponent	U.S. position
Order Rhynchocephalia			
Sphenodon spp. (Tuataras) or *Sphenodon guntheri* (Brother's Island tuatara).	Add to I	New Zealand	Support.[27]
Order Sauria			
Phymaturus flagellifer (Racerunner lizard)	Add II	Chile	Oppose.[2]
Pristidactylus alvarol	Add to II	Chile	Support.[1]
Pristidactylus torquatus	Add to II	Chile	Support.[1]
Prestidactylus valreiae	Add to II	Chile	Support.[1]
Pristidactylus volcanensis	Add to II	Chile	Support.[1]
Callopistes palluma	Add to II	Chile	Support.[26]
Varanus bengalensis (Indian monitor)	Transfer from I to II (Bangaledesh population)	Bangladesh	Oppose.[28]
Varanus flavescens (Yellow monitor)	Transfer from I to II (Bangladesh population)	Bangladesh	Oppose.[28]
Amphibians:			
Order Anura			
Bufo periglenes (Monte Verde or Golden toad)	Add to I	Netherlands	Support [29]
Mantella aurantiaca (Malagasy golden frog)	Add to I	Netherlands and Germany.	Support.[26]
Fish·			
Order Osteoglossiformes			
Scleropages formosus (Asian bonytongue)	Transfer from II to I (Indonesian population)	Indonesia	Support.[30]
Scleropages formosus (Asian bonytongue)	Transfer from II to I Indonesian population	Switzerland	Support.[22]
Molluscs:			
Charonia tritonis (Giant triton)	Add to II	Australia	Support.[1]
Placostylus spp. (New Zealand flax snails)	Add to II (New Zealand population)	New Zealand	Support.[1]
Powelliphanta spp. (New Zealand land snails)	Add to II (New Zealand population)	New Zealand	Support.[3]
Insects:			
Colophon spp. (Cape stage beetles	Add to I	Netherlands	Support.[1]
Arachnids:			
Pandinus dictator (Emperor scorpion)	Add to II	Ghana	Support.[3]
Pandinus gambienis (scorpion)	Add to II	Ghana	Support.[3]
Pandinus imperator (scorpion)	Add to II	Ghana	Support.[26]
Plants:			
Family Apocynaceae			
Pachypodium ambondgenese	Transfer from II to I	Madagascar & Switzerland.	Support.[1]
P. brevicaule	Transfer from I to II	Madagascar & Switzerland.	Oppose.[17,31,32]
P. namaquanum	Transfer from I to II	Switzerland	Support.[2]
Family Araceae			
Alocasia sanderiana	Remove from II	Switzerland	Support.[1]
Family Balanophoraceae			
Dactylanthus taylorii	Add to I	New Zealand	Support.[33,2]
Family Berberidaceae			
Berberis aristata de Candolle	Add to II	India	Oppose.[34,17 31]
Family Cactaceae			
Astrophytum asterias	Transfer from I to II	Mexico & Switzerland.	Oppose.[17]
Leuchtenbergia principis	Transfer from I to II	Mexico & Switzerland.	Support.[1]
Mammillaria plumosa	Transfer from I to II	Mexico & Switzerland.	Support.[2]
Family Ebenaceae			
Diospyros mun	Add to II	Germany	Support.[2]
Family Euphorbiaceae			
Euphorbia cremersii	Transfer from II to I	Madagascar & Switzerland.	Support.[1]
Euphorbia primulifolia	Transfer from I to II	Madagascar & Switzerland.	Oppose.[35]
Family Gentianaceae			
Gentiana kurroo	Add to II	India	Oppose.[17,31,2]
Family Leguminosae (Fabaceae)			
Dalbergia melanoxylon	Add to II	Germany; Kenya.	Support.[2,36]
Pterocarpus santalinus	Add to II	India	Support.[2,37]
Family Liliaceae			

Species	Proposed amendment	Proponent	U.S. position
Aloe albiflora	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe alfredii	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe bakeri	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe barbadensis (syn. A. vera [sic])	Remove from II	Switzerland	Under review.[39]
Aloe bellatula	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe calcairophila	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe compressa (inc. var. *rugosquamosa* and var. *schistophila*).	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe delphinensis	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe descoingsii	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe fragilis	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe haworthioides (inc. var. *aurantiaca*)	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe helenae	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe laeta (inc. var. *maniensis*)	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe parallelifolia	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe parvula	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe rauhii	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe suzannae	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe versicolor	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Colchicum luteum	Add to II	India	Oppose.[17,31]
Family Meliaceae			
Entandrophragma spp	Add to II	Germany	Support.[2,40]
Khaya spp	Add to II	Germany	Support.[2,40]
Swietenia macrophylla of the neotropics, incl. natural hybrid with *S. humilis*, and *sic* with *S. mahagoni*.	Add to II	Netherlands	Under review.[41]
Family Orchidaceae			
Cattleya skinneri	Transfer from I to II	Switzerland & Mexico.	Support.[1]
Cypripedium cordigerum	Transfer from II to I	India	Oppose.[17,31]
Cypripedium elegans	Transfer from II to I	India	Oppose.[17,31]
Cypripedium himalaicum	Transfer from II to I	India	Oppose.[17,31]
Cypripedium tibeticum	Transfer from II to I	India	Oppose.[31]
Dendrobium cruentum	Transfer from II to I	Thailand	Support.[2,42]
Didiciea cunninghamii	Transfer from I to II	Switzerland	Support.[1]
Lycaste skinneri var. *alba*	Transfer from I to II	Switzerland & Mexico.	Support.[1]
Family Polygonaceae			
Rheum australe	Add to II	India	Oppose.[17,31,4]
Family Ranunculaceae			
Aconitum deinorrhizum	Add to II	India	Oppose.[2]
Aconitum ferox	Add to II	India	Oppose.[2]

Species	Proposed amendment	Proponent	U.S. position
Aconitum heterophyllum	Add to II	India	Oppose.[2]
Coptis teeta	Add to II	India	Oppose.[2]
Family Rosaceae			
Prunus africana	Add to II	Kenya	Support.[1,2]
Family Scrophulariaceae			
Picrorhiza kurrooa	Add to II	India	Oppose.[17,31,2]
Family Taxaceae			
Taxus wallichiana	Add to II	India	Support.[2,43]
Family Theaceae			
Camellia chrysantha	Remove from II	Switzerland	Support.[1]
Family Thymelaeaceae			
Aquilaria malaccensis (syn. *A. agallocha*)	Add to II	India	Support.[2]
Family Valerianaceae			
Nardostachys grandiflora	Add to II	India	Oppose.[17,31,2]
Parts and Derivatives Proposal		Germany	Support.

With respect to Appendix II plant taxa replace the standard exclusions:

"tissue cultures and flasked seedling cultures" with

"seedlings or tissue cultures obtained *in vitro* in sterile culture media, either liquid or solid, transported in containers commonly used for these types of cultures, with different shapes and made of different materials".

The bases for the final U.S. negotiating positions on the proposals are:

[1] The listing, uplisting, downlisting, or delisting of the taxon, as proposed, appears to be justified by the biological status and trade information in the proposal or currently available to the Service.

[2] Limited population status and trade information is given, but the United States will give strong consideration to the statements of range State(s) and looks forward to discussions with them at the COP.

[3] The listing of this taxon, as proposed, appears to be justified by the trade information and/or the similarity of appearance concern.

[4] Although this proposal was not formally submitted pursuant to the ten-year review resolution for downlisting, this action appears to be justified under such provisions.

[5] These species of chinchillas are presently listed in Appendix I in South America and are classified as rare, vulnerable, or endangered by IUCN. Complete removal of protection for captive-bred forms of these species potentially places wild populations at risk. However, a downlisting of the captive populations in South America to Appendix II, at least until it is determined that there is no risk to wild forms, would be both appropriate and consistent with the position of the CITES Standing Committee on proposed changes in listing criteria (Annex 4).

[6] The United States continues to support the 1978 request from the International Whaling Commission (IWC) to take all possible measures to support the IWC ban on commercial whaling for certain species and stocks of whales and opposes the transfer of the minke whale from Appendix I to Appendix II.

[7] The United States will support the position of India (where the status of the subspecies may be more precarious) that the subspecies remain in Appendix I within india.

[8] Trade and population information is considered insufficient, and neither population status nor trade levels of species occurring in the United States appears to warrant listing the entire genus. Five species are identified in *Mammals Checklist of the World* by Wilson and Reeder (1993) including two (*C. leuconotus* and *C. mesoleucus*) that occur in the southwestern part of the United States. The United States will give strong consideration to the opinions of range States regarding listing of those species not occurring in the United States.

[9] The Service believes that, under intensely managed and enforced conditions, consumptive use of African elephants can be sustainable and, in certain cases, may be a key component of effective conservation strategies. Rigorous controls on trade are an important part of management. The United States opposes reopening of the ivory trade and is concerned that the South African proposal as originally submitted did not appear to eliminate the possibility of legal trade being resumed or of illegal trade being escalated. A Panel of Experts established under the provisions of Conf. 7.9 is reviewing in country trade controls. The U.S. will not finalize its position until it has had the opportunity to review the Panel's report in detail along with any revisions of the proposal submitted by South Africa.

[10] This proposal does not meet trade control provisions outlined in Conf. 7.9.

[11] This proposal would allow legal trade in rhino horn products, albeit with strict in-country controls; such trade is premature until illegal trade is under control. The United States supports decisions of the Standing Committee that illegal trade in rhinoceros specimens or product undermines the effectiveness of CITES. The United States continues to support decisions from previous meetings of the Conference of the Parties and the Standing Committee regarding rhinoceros conservation and trade in rhinoceros horn. The United States is highly supportive of efforts by major consumer states to ban the importation and sale of rhinoceros parts and products and to cooperate in enforcement efforts.

[12] The information received does not demonstrate that Peruvian Appendix II populations subjected to managed take and trade have fared better than Appendix I populations. Given that, and pending clear demonstration that sustainable use programs are working, downlisting of Appendix I populations is premature. Trade controls for wool of Appendix II animals (similar to those proposed by Chile to ensure that illegal wool does not enter trade) are encouraged and would receive positive consideration.

[13] Export of fiber and re-import of processed fiber would be monitored to control inclusion of illegal fiber in any significant amount. U.S. support is contingent upon strong assurances that adequate trade controls are in place and that native communities receive maximum economic incentive to manage Appendix II populations sustainably.

[14] These entities are considered populations of one species, *Anas auklandica,* in the current CITES-adopted check list. By recommending the uplisting of the two subspecies (according to some authorities) currently on Appendix II, the net result of this proposal is to list the entire species, *Anas aucklandica,* on Appendix I. Recommendations of the Nomenclature Committee regarding this proposal will be considered.

[15] The Service is concerned with the methodology used in the study on which this proposal is based and is not convinced that the resulting population estimates are realistic. In addition, the Service is concerned about the implications for trade in other island populations of this species.

[16] If a valid taxon, the transfer of *Cyanoramphus malherbi* to Appendix I seems justified on biological and trade grounds. However, this "species" is now considered to be a color morph of *C. auriceps* in the CITES-adopted checklist. Therefore, support will be contingent upon recommendation of the Nomenclature Committee as to the validity of the listing.

[17] The population-status information is not sufficient to warrant the listing, uplisting, downlisting, or delisting as proposed.

[18] The Service supports the above proposal submitted by the United Kingdom to downlist *Psittacus erithacus princeps* from Appendix I to Appendix II (thereby placing the entire species, *P. erithacus,* on Appendix II). If the Parties adopt the above downlisting proposal, the Service understand that the United Kingdom will withdraw this alternative proposal. However, if the Parties reject the downlisting proposal, the Service will support the alternative proposal in the interest of clarifying the taxonomy of *P. erithacus.*

[19] The Service opposes this proposal until (a) effective population monitoring, trade controls, and licensing procedures are in place, and (b) evidence is presented that the wild population can sustain the initial level of harvest of eggs and hatchlings proposed for initiating the ranching program.

[20] The Service is concerned about management and enforcement, including but not limited to the considerations presented in footnote 21.

[21] The transfer of certain crocodilian populations from Appendix I to II was proposed pursuant to Conf. 3.15 (ranching) or Conf. 5.21 and 7.14 (export quota). The Service's initial support of these proposals is contingent upon assurance that (1) annual and other required reports are being filed regularly by the proponent with the CITES Secretariat, (2) there is an adequate basis to monitor the status of wild populations, (3) animals will be returned to the wild in numbers as appropriate, and (4) there is an implementable limit on the harvest of wild juveniles and adults.

[22] Switzerland, as depositary government, proposed the transfer from Appendix II to Appendix I of those species that were downlisted from Appendix I to Appendix II under the provisions of Conf. 5.21. If ranching or export quota proposals are adopted by the Parties, Switzerland will withdraw its proposal for those populations.

[23] The Service opposes expansion of export quotas for wild-harvested animals beyond currently authorized levels without further justification. The Service agrees with the IUCN Crocodile Specialist Group that Conf. 7.14 is inappropriate in this case and that wild harvest should be conducted only on a limited basis as "reasonable cropping" in conjunction with ranching programs under Conf. 8.22.

[24] Support for this proposal is conditioned upon the inclusion of the entire species *L. punctata* in Appendix II.

[25] The United States submitted a similar proposal for this genus but was able to include more recent information in its proposal, a copy of which is available from either the Office of Management Authority or Office of Scientific Authority.

[26] Support for this proposal is based on trade levels and the historical effects of trade on other populations or the reproductive characteristics of the species. However, the Service will consider any new population information.

[27] The Service supports the inclusion of *Sphenodon* spp. (tuataras) as opposed to *S. guntheri* on Appendix I, but considers all tuataras to have been included in Appendix I already, based on the present listing of *S. punctatus*. The Nomenclature Committee agrees with the latter and recommends that the listing be changed to *Sphenodon* spp., now that *S. punctatus* has been split into more than one species. If the Committee's report is adopted by the Parties, it will render the New Zealand proposal redundant.

[28] Although this is proposed as a temporary transfer to Appendix II until the next COP, the Service's long-standing position has been to oppose commercial sale of confiscated specimens of Appendix I species.

[29] The Service would support listing of this taxon in Appendix I on the basis of Conf. 2.19 (i.e., due to the taxon's rarity, and because any trade in this taxon would be detrimental).

[30] Malaysia has had a captive breeding facility registered for this species in accordance with Article VII paragraph 4 and pursuant to /conf. 8.15. Indonesia is proposing to register similar facilities but to date these have not been accepted by the CITES Secretariat. In the absence of the registration of one or more facilities in Indonesia, this proposal by Indonesia would preclude commercial trade in this species. Therefore, Indonesia may wish to consider modifying its proposal to continue the present downlisting to Appendix II pursuant to Conf. 5.21, under which there is an export quota for captive-reared fish and a zero quota for wild fish.

[31] Trade information is considered insufficient to support the proposal.

[32] The United States recognizes that the downlisting of this species should be linked with the need for an export quota or sustainable-harvest system, which is expressed in the proposal, the analysis by IUCN, and the position of the TRAFFIC Network. The United States believes that a management plan and appropriate quota should be in place before downlisting. This quota should take into account the population structure (including age structure) of the species, so that there is not excessive pressure to remove the large (and much older) wild individuals, for which artificially propagated specimens presently do not substitute. Furthermore, the establishment of artificial propagation program in Madagascar would be an important consideration. Trade of artificially propagated Appendix I specimens can be facilitated by means of multiple-shipment export permits that have validity for 6 months and are renewable.

[33] The concern is export of the "wood-rose", which the United States believes would be properly included by listing *Dactylanthus taylorii* (puao-te-reinga) because the wood-rose is an essential derivative of *D. taylorii* that is induced by its interaction with its host. Each wood-rose may be completely the substance (root-tissue) of an individual of several common host trees or shrubs, which has been wholly transformed at and near the host-*Dactylanthus* interface by *D. taylorii*.

[34] *Berberis aristata* of some authors but not de Candolle is *B. chitria and* (and/or *B. floribunda*).

[35] The downlisting of this species is unjustified, because of similar appearance of other dwarf taxa of subgenus *Lacanthis* that are in Madagascar and are all in Appendix I. Moreover, no management plan is in place for the two varieties of this popular species—especially for the less common var. *begardii*. Trade in artificially propagated Appendix I specimens can be facilitated by means of multiple-shipment export permits that have validity for 6 months and are renewable.

[36] The United States will seek amendment of this proposal to exclude the non-African (non-native) population, and to exclude finished musical instruments. This species is often called African blackwood; although in the proposal one of the common names mentioned is African ebony, true ebonies—including African ebony—normally are regarded to be species of *Diospyros*.

[37] The United States will seek amendment of this proposal to exclude both finished musical instruments and chemical derivatives.

[38] The United States is tentatively in support of the uplisting all 17 of the *Aloe* species; however, in an effort to determine which appendix would provide more net benefit to the wild populations, the United States is evaluating which of these species can be easily propagated, are readily available as propagated specimens, and may become less available under Appendix I trade controls [Conf. 5.14(b)(iii)].

[39] The proposal is in error in not treating *Aloe barbadensis* as a synonym of *Aloe vera*. The parts and derivatives of artificially propagated *Aloe vera* already are not regulated by CITES. The service is considering whether unregulated trade in whole plants of *Aloe vera* would place wild populations of threatened aloes at increased risk.

[40] The listing of this taxon appears to be justified; similarity of appearance also is a concern.

[41] The United States received information regarding this species and its trade at a meeting of the Linnean Society of London on September 8, 1994. Note that hybrids between *Swietenia macrophylla* and *S. mahagoni* are spontaneous but are not natural hybrids in terms of Conf. 2.13; they sometimes occur where people have introduced *S. macrophylla* into proximity with *S. mahagoni*. If the United States were to support this proposal, it would want it amended to exclude parts and derivatives other than logs, sawn wood, veneer sheets, and plywood sheets.

[42] The problem of identification of this species when not in flower is recognized, as the remainder of this genus of about 900 species would remain in Appendix II.

[43] The United States is evaluating whether to seek an amendment of this proposal to exclude chemical derivatives (i.e., the end-product medicine).

Future Actions

Amendments are adopted by a two-thirds majority of the Parties present and voting. All species amendments adopted will enter into effect 90 days after the close of COP9 (i.e., on February 16, 1995) for the United States, *unless* a reservation is entered. Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species, if it enters a reservation with respect to that species. A Party desiring to enter a reservation must do so during the 90-day period immediately following the close of the meeting at which the Parties voted to include the species in Appendix I or II. Soon after COP9, the Service plans to publish a notice in the **Federal Register** announcing the final vote of the Parties on these listing proposals. If the United States should decide to enter any reservation, this action must be transmitted to the Depositary Government (Switzerland) by February 16, 1995.

The Service invites comments and recommendations from the public concerning reservations to be taken by the United States on any amendments to the appendices adopted by the Parties at COP9. The Service's past practice has been to solicit public comments only after the COP, in the notice that announces the actions of the Parties at the COP on the proposed species amendments. However, because of the short time available for taking reservations, the Service is now soliciting comments on possible reservations on any proposed species amendment that may be adopted. Although the Service will re-solicit comments after COP9 *if time is available*, this present notice may be the only request for such comments. Recommendations or comments regarding reservations must be received by January 17, 1995. If the United States should enter any reservations, they will be announced in the same **Federal Register** notice that incorporates the listing decisions of the Parties into the

Code of Federal Regulations (50 CFR Part 23).

Reservations, if entered, may do little to relieve importers in the United States from the need for foreign export permits, because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If a foreign country has enacted CITES as part of its positive law, and that country has not taken a reservation with regard to the animal or plant, or its parts or derivatives, the United States (even if it had taken a reservation on a species) would continue to require CITES documents as a condition of import. Any reservation by the United States would provide exporters in this country with little relief from the need for U.S. export documents. Receiving countries that are party to CITES would generally require CITES-equivalent documentation from the United States, even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all the information required in CITES permits or certificates. In addition, if a reservation is taken on a species listed in Appendix I, the species should still be treated by the reserving Party as in Appendix II according to Conf. 4.25, thereby still requiring CITES documents for export of these species.

The United States has never entered a reservation to a CITES listing. It is the policy of the United States that commercial trade in Appendix I species for which a country has entered a reservation undermines the effectiveness of CITES.

This notice was prepared by Drs. Marshall A. Howe, Bruce MacBryde, and Charles W. Dane, Office of Scientific Authority, under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 1, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-27731 Filed 11-4-94; 12:20 pm]

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Notices

Federal Register
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Tuesday, November 8, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Kristin Heim or Thomas McGinty, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3798 or (202) 482–5055, respectively.

Final Determination

The Department of Commerce ("the Department") determines that certain cased pencils (pencils) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on June 8, 1994, (59 FR 30911, June 16, 1994), the following events have occurred.

From July 4 through 15, 1994, Department officials conducted verification of the responses of the responding exporters, Shanghai Foreign Trade Corporation (SFTC), Shanghai Lansheng Corporation (Lansheng), Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong), and China First Pencil Co., Ltd. (China First), a responding exporter and manufacturer; and the responding manufacturers Shanghai Three Star Stationery Industry Corporation (Three Star), and Anhui Stationery Company (Anhui).

On July 22, 1994, petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of certain cased pencils from the PRC. On August 10, 1994, the Department published in the **Federal Register** a notice of postponement of the final determination (59 FR 40865). On August 26, 1994, the Department published in the **Federal Register** a preliminary affirmative determination of critical circumstances (59 FR 44128).

Petitioner and respondents submitted case and rebuttal briefs on September 21 and October 3, 1994, respectively. A public hearing was held on October 5, 1994.

Scope of Investigation

The products covered by this investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Class or Kind of Merchandise

At the time of our initiation, the Department solicited comments from interested parties on whether all cased pencils constitute one class or kind of merchandise. Respondents first argued that raw pencils/pencil blanks and semi-finished pencils constitute a separate class or kind of merchandise apart from finished pencils.

In addition, the Asia Pencil Association, an interested party in this investigation, argued that specialty pencils (*e.g.*, carpenter and art pencils) constitute a separate class or kind of merchandise. However, the information submitted in support of its claim was insufficient to allow us to make a preliminary determination that specialty pencils are a separate class or kind of merchandise and no new information on specialty pencils has been submitted since the preliminary determination.

Based on the information provided the Department preliminarily determined that neither specialty pencils nor raw blanks constituted a separate class or kind of merchandise.

In a submission dated June 2, 1994, respondents argued that the merchandise subject to this investigation comprises four separate classes or kinds of merchandise. Those arguments were filed too late to be considered for the preliminary determination and were to have been addressed fully in this determination. However, in their case brief of September 21, 1994, respondents argued that there are three classes or kinds of merchandise: Commodity, colored and designer. The Department will therefore address only respondents' most recent argument about the appropriate number of classes or kinds of merchandise under investigation.

In order to establish whether cased pencils represent a single class or kind of merchandise, we examine below each of the criteria used by the Department to determine class or kind as described in 19 CFR 353.29(i) (1) and (2) and *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F.Supp. 883 (1983).

Physical Characteristics

Respondents argue that commodity pencils are invariably hexagonal with a graphite core and a plain paint finish, colored pencils have a chemical-intensive core and designer pencils are round with a graphite core and "proprietary artwork" designs.

Petitioner argues that, while the outward physical form of pencils sometimes differs, the production process is identical, except for the finishing. Petitioner submits that some commodity pencils are round while some designer pencils are hexagonal as well as triangular; that graphite pencils come in varying degrees of hardness due

to varying chemical composition; and that the chemical core for colored pencils does not distinguish it from all other "disposable, delible, portable marking instruments that require sharpening to renew the core."

The cased pencils described in the scope of this proceeding are disposable writing instruments. Two essential elements are present in all cased pencils. These are (1) a core which contains the material that, when the pencil is put to use, leaves a mark on a surface and (2) the casing in which the core rests. As such, we conclude that the physical characteristics of all pencils within the scope are similar.

Regarding respondents' argument that the chemical-intensive cores of colored pencils should serve to distinguish them from other pencils in the scope, we note that the core composition of commodity pencils also varies based on the desired hardness and blackness of the pencil. Hence, we do not find this to be a basis for distinguishing colored from other pencils.

With regard to shape, petitioner and respondents have submitted conflicting arguments. Based on the evidence on this record, the Department determines that commodity and designer pencils do not always have different shapes. Finally, with regard to the proprietary artwork on designer pencils, the difference from commodity pencils includes the application of foil, paint, ferrules, erasers, or some form of eye-catching topper. While these add-ons make the pencils physically different from commodity pencils, they do not change the basic physical characteristics of the product, *i.e.*, a core encased in wood or other material.

Customer Use and Expectations

Respondents argue that commodity pencils are used in schools and businesses for writing; colored pencils are usually for children and always for coloring (not writing); and designer pencils are for collecting. In addition, respondents argue that marks made by most colored pencils are not able to be erased, while those of graphite pencils are. Petitioner contends that the customer use and expectation of all pencils is to make a mark on a surface.

We agree that the expectations and uses of colored pencils are various and may differ from the expectations and uses of commodity and designer pencils. With respect to designer pencils, however, there is no evidence to support respondents' claim that these pencils are solely for collecting. While they are collectable, they are also used as writing instruments. Therefore, we have no basis to distinguish designer pencils from commodity pencils in terms of customer use and expectations.

Channels of Trade

The channels of trade for PRC pencil sales are similar for all pencil types. The producer and/or exporter sells either directly to retail customers or distributors in the United States. The distributors then sell to either retailers or end-users in the United States. According to petitioner, U.S. produced pencils are also sold by manufacturers to retail customers or distributors. These distributors may also sell to retailers, businesses or schools. Hence, we find that all pencils within the scope of this proceeding are sold in the same channels of trade.

Manner in Which Pencils Are Advertised and Displayed

There is conflicting evidence on the record in this investigation with respect to the manner in which pencils are advertised and displayed. Petitioner points to a China First catalog submitted in response to section A of our questionnaire. Petitioner argues that since all types of pencils are included in the China First catalog (some individual pages include a number of different types of pencils), we should conclude that the manner in which pencils are displayed is similar regardless of pencil type. Petitioner also submits that different types of pencils are often displayed together in retail outlets.

Conversely, respondents submit that the manner of displaying and advertising pencils is particular to the type of pencil being offered for sale. Respondents contend that colored pencils are not offered for sale in office supply stores and commodity pencils cannot be found in toy stores and party shops. Respondents contend that even in the unusual event that commodity, colored, and designer pencils were offered for sale in the same store, they would not be displayed together.

Based on our research, both petitioner and respondents are correct. Specialty stores such as party shops do not usually stock commodity pencils. On the other hand, office supply stores or pharmacies such as "Staples" or "CVS" carry all three pencil types (commodity, colored and designer). In some instances they are displayed together, in other instances they are displayed separately.

Conclusion

Based on the arguments presented and our own research and analysis, the Department is not persuaded that a determination of three separate classes or kinds of merchandise is warranted in this investigation. Although the products differ in certain respects, on the whole the similarities greatly outweigh the dissimilarities. In its *Notice of Final Determination of Sales at Less Than Fair Value: Antifriction Bearings from West Germany*, 54 FR 18992 (May 3, 1989), the Department stated that "the real question is whether the differences are so material as to alter the essential nature of the product, and therefore, rise to the level of class or kind differences." In this instance, the differences do not alter the essential nature of the product. In addition, although such a finding is not dispositive to this analysis, the ITC recently issued its report on Cased Pencils from Thailand stating that "all cased pencils . . . have similar physical characteristics and uses." (ITC Publication 2816, at I–8). Therefore, we conclude that commodity, colored and designer pencils are a single class or kind of merchandise.

Period of Investigation

The period of investigation (POI) is June 1, 1993, through November 30, 1993.

Separate Rates

The four participating exporters, SFTC, Guangdong, China First, and Lansheng have each requested a separate rate. SFTC and Guangdong are companies owned by "all the people." China First and Lansheng are shareholding companies, both of which were previously owned by "all the people." China First issued shares in 1992 and Lansheng issued shares in September 1993. In the preliminary determination, Guangdong, SFTC, and Lansheng received separate rates. With respect to China First, we preliminarily determined that, due to the lack of information on the record regarding China First's ownership structure, we could not grant China First a separate rate at that time.

In the *Final Determination of Sales at Less Than Fair Value: Compact Ductile Iron Works from the People's Republic of China*, 58 FR 37909 (July 14, 1993) (*CDIW*), the Department determined that state-owned companies, *i.e.*, those owned by the central government, were not eligible for separate rates. In the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, (May 2, 1994) (*Silicon Carbide*), we found that the PRC central government had devolved control of state-owned enterprises, *i.e.*, enterprises "owned by all the people." As a result, we determined that companies owned "by all the people" were eligible for

individual rates, if they met the criteria developed in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in *Silicon Carbide*.

In this investigation, and in the recent final determination involving paper clips from the PRC (59 FR 51170, October 7, 1994), we have examined companies that had been "owned by all the people," but are now shareholding companies with varying levels of government ownership. When these companies were "owned by all the people," the central government devolved control of them. Hence, we focused our examination on whether the change in ownership form to shareholding companies altered that devolution of control. We found that it did not. Significantly, we found that the government (whether the central government or the Government of Shanghai) did not vote the shares. (*See*, verification reports of Lansheng and China First.) Although the government held its shares on behalf of the people, in one case those shares were voted by the company's former general manager (Mr. Lansheng), and in the other by the workers (China First).

Because we have found that the government has, in effect, severed the voting rights from the shares it holds in trust on behalf of the people and bestowed those rights on the enterprises themselves, we determine that Lansheng and China First do not fall within the prohibition set out in *CDIW*. Hence, the Department has applied the criteria developed in *Sparklers* and amplified in *Silicon Carbide* to determine whether these companies, as well as the companies "owned by all the people," should receive separate rates. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[1] and *de facto*[2] governmental control over export activities.

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

De Jure Analysis

The PRC laws placed on the record of this case establish that the responsibility for managing companies owned by "all the people" has been transferred from the government to the enterprise itself. These laws include: "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 (*1988 Law*); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (*1992 Regulations*); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 (*Export Provisions*). The *1988 Law* states that enterprises have the right to set their own prices (*see* Article 26). This principle was restated in the *1992 Regulations* (see Article IX).

While the PRC government has devolved control over state-owned enterprises, the government has continued to regulate certain products through export controls. The *Export Provisions* list designates those products subject to direct government control. Pencils do not appear on the *Export Provisions* list and are not, therefore, subject to the constraints of these provisions.

Consistent with *Silicon Carbide*, we determined that the existence of these laws demonstrates that Guangdong and SFTC, companies owned by "all the people," are not subject to *de jure* control.

Since Lansheng and China First were initially companies owned by "all the people," the laws cited above establish that the government devolved control over such companies. The only additional law that is pertinent to the *de jure* analysis of Lansheng and China First as share companies is the *Company Law* (effective July 1, 1994). While Lansheng and China First indicated that they were organized consistent with the *Company Law*, the law did not enter into force until seven months after the POI. In any event, this law does not alter the government's *de jure* devolution of control that occurred when the companies were owned "by all the people." Therefore, we have determined that Lansheng and China First are not subject to *de jure* control.

In light of reports[3] indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly, an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to governmental control.

[3] *See* "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93–133 (July 14, 1993) and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt.2 (102 Cong., 2d Sess)

De Facto Control Analysis

We analyze below the issue of *de facto* control based on the criteria set forth in *Silicon Carbide*.

Guangdong

In the course of verification, we confirmed that Guangdong's export prices are not set, or subject to approval, by any government authority. This point was supported by Guangdong's sales documentation, company correspondence, and confirmed through questioning of a Shanghai Commission of Foreign Trade and Economic Cooperation (COFTEC) representative. Through an examination of sales documents pertaining to U.S. pencil sales, we also noted that Guangdong is able to negotiate prices with its customers without government interference or influence.

We confirmed, through an examination of bank documents, that Guangdong has the authority to borrow freely, independent of government authority. We further found that, although required to exchange 20 percent of its foreign exchange proceeds at the official exchange rate, Guangdong retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses. Guangdong's financial and accounting records supported this conclusion.

Finally, we have determined that Guangdong has autonomy from the central government in making decisions regarding the selection of management. At verification, we found that management is elected by the Employee's Congress, which is made up of 60 percent workers and 40 percent department chiefs. First candidates are nominated by the workers in each department. The Employee's Congress then reviews the qualifications of potential candidates and elects them. A review of the documentation of the election process indicated that COFTEC then confirms Guangdong's election of management. Based on an analysis of all these factors, we have determined that Guangdong is not subject to *de facto* control by governmental authorities.

SFTC

During verification, we established that SFTC's export prices are set by the company and do not require approval by any governmental authority. SFTC has the authority to negotiate and sign contracts and other agreements independent of any government authority as evidenced by our examination of correspondence and written agreements and contracts. We also confirmed that SFTC retained proceeds from its export sales and made independent decisions regarding disposition of profits by examining bank account records, financial records, and purchase contracts.

Based on our examination of management appointment announcements and other correspondence, we have determined that SFTC had autonomy from the government in making decisions regarding the selection of management. Management was elected by 50 departmental staff representatives. These representatives were themselves elected by workers in each department. Documentation provided by SFTC demonstrated that the provincial government merely acknowledged SFTC's election of management. In light of the above evidence of the lack of *de facto* government control, we have concluded that SFTC is entitled to a separate rate.

Lansheng

In conducting a *de facto* analysis of Lansheng, we have examined the factors set forth in *Silicon Carbide*, and whether the change in corporate structure alters our conclusion regarding those factors. Lansheng's sales documentation and correspondence support the conclusion that no government entity exercises control over Lansheng's export prices. Additionally, our examination of numerous contracts with domestic and foreign trading companies demonstrates that Lansheng has the authority to negotiate and sign contracts and other agreements without interference from any governmental entity. We confirmed during verification that this situation did not change after Lansheng became a share company.

Before Lansheng became a share company, the general manager of its predecessor company, Shanghai Stationery & Sporting Goods Import and Export Company (Shanghai Stationery), was elected on February 27, 1993. The election proceeded in the following manner.

First, for every ten employees, there was one elected representative. Second, the representatives then elected the general manager. Third, once the general manager was elected, the company sent a letter, announcing the election to COFTEC. COFTEC then approved the election process and sent a letter of congratulations to the company. While COFTEC technically had the authority to reject an elected manager, it reportedly had never done so.

After Lansheng became a share company, the same manager continued to lead the company. At the first general shareholders' meeting, when Lansheng's Board of Directors was elected, the shares held by the State Asset Management Bureau (SAMB) were voted by the general manager of the former company, Shanghai Stationery. Subsequently, the newly elected Board of Directors appointed the former general manager as Chairman of the Board for Lansheng. The evidence on the record regarding the election of management indicates that no representative of the SAMB was present at, or participated in, the election of the Board of Directors or the decision to retain current management. Moreover, the chairman's authority to vote the shares held by the government supports the conclusion that the chairman and the board, rather than the government, have the authority to appoint the company's management.

We also found that Lansheng retained proceeds from export sales and made independent decisions regarding the disposition of profits and financing of losses both before and after becoming a share company. This point was supported through examination of Lansheng's bank account records and bank loan applications.

As indicated above, the record indicates that Lansheng's change to a share company did not have any effect on the government's devolution of control over Lansheng. The evidence shows that, following its conversion to a share company, 25.1 percent of Lansheng's shares were sold publicly, with the proceeds returning to the company as new capital investment. The remaining 74.9 percent of the shares represents the value of the assets in the original company, Shanghai Stationery (which was owned "by all the people"). Evidence on the record indicates that these remaining shares are held in trust by the SAMB, just as its assets were held in trust when Lansheng was owned "by all the people." The company's management, which has remained the same throughout its transition to a share company, votes these shares at the general shareholders' meetings of Lansheng. This evidence supports the conclusion that, under the new corporate structure, the government has not exerted control over Lansheng through the exercise of shareholder rights or otherwise; operational control remains in the hands of company management.

China First

China First has been a public company since 1992. China First's shareholders include both the state and individual PRC and foreign investors. At verification, through an examination of the minutes from the 2nd Annual Shareholders Meeting, company records, and discussions with government and company officials, we found that the holder of the state-owned shares was the "Office for State Assets Administration of the Shanghai Municipality" (SAASM) and that SAASM's shares are voted by the company's employee shareholders. We also note the record shows that, as of verification, more than 50 percent of China First's shares were held by private, individual investors, both foreign and Chinese.

In conducting a *de facto* analysis of China First, we have examined the factors set forth in *Silicon Carbide*. China First's sales documentation and correspondence supports the conclusion that no government entity exercises control over China First's export prices. Additionally, our examination of numerous contracts with domestic and foreign trading companies demonstrates that China First has independent authority to negotiate and sign contracts and other agreements, such as joint ventures.

China First holds a general shareholders meeting annually. At this meeting the shareholders elect the Board of Directors, each of whom serves a three year term. Employees vote the shares held by the government in selecting the Board. The Board of Directors in turn selects the company's management. Because the state-owned shares represent a minority interest and because those shares are, in fact, voted by employee shareholders, the evidence supports the conclusion that the government does not control selection of the Board of Directors or other members of management.

We also found that China First retained proceeds from export sales and made independent decisions regarding the disposition of profits and financing of losses both before and after becoming a share company. This point was supported through an examination of China First's financial and accounting records, and bank accounts. The evidence supports the conclusion that, under the corporate structure of China

First, the government has not exerted control through the exercise of shareholder rights or otherwise; operational control remains in the hands of company management.

Conclusion

In the case of Guangdong, SFTC, Lansheng and China First, the record demonstrates an absence of *de jure* and *de facto* government control. Accordingly, we determine that each of these exporters should receive a separate rate.

Nonmarket Economy

The PRC has been treated as a nonmarket economy (NME) in past antidumping investigations. (*See, e.g., Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the People's Republic of China*, 59 FR 511680 (October 7, 1994)). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with 771(18)(c) of the Act, the Department has treated the PRC as an NME for purposes of this investigation.

Where the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base FMV on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. Section 773(c)(2) of the Act alternatively provides that where available information is inadequate for using the factors of production methodology, FMV may be based on the export prices for comparable merchandise from market economy countries at a comparable level of economic development.

In this investigation, respondents have urged the Department to employ the alternative methodology provided in section 773(c)(2) of the Act, *i.e.*, the export price of a pencil from a comparable market economy. In particular, they have argued that because the primary input into PRC pencils, lindenwood, cannot be valued exactly, the Department is compelled to employ the alternative valuation of FMV. Petitioner argues against using the alternative methodology for FMV. Instead, petitioner suggests that prices for jelutong wood be used to value lindenwood, as the Department did in the preliminary determination.

We have determined that the absence of a price for lindenwood in the surrogate country does not preclude us from using the factors of production methodology. However, we have not used the jelutong prices relied upon in our preliminary determination. For further discussion of the arguments regarding the alternative methodology, see, Comment 1, below.

Surrogate Country

As discussed above, section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the nonmarket economy country, and (2) significant producers of comparable merchandise. Of the countries that have been determined to be economically comparable to the PRC, evidence on the record of this case indicates that India, Pakistan and Indonesia are significant producers of pencils (see, Calculation Memorandum, attachment 1, October 31, 1994). In order to select the surrogate from among these countries that meet the statutory criteria, we have reviewed the data that has been submitted and that we have been able to develop on factor values from these countries.

With respect to Pakistan, we have not located data for a significant number of the Chinese production factors. Among the missing factors are: certain packing materials, polyvinyl acetate, semi-skilled labor, SG&A, profit, and all transportation rates except trucking for a distance of 1000 km. For Indonesia, we have data for even fewer factors. In India, we have factor values for all inputs (other than wood, as discussed below, and tallow). Moreover, we have obtained 1993 values for India, the most recent time period available for data from any surrogate country. Because India meets the statutory criteria for surrogate country selection, and because we have more complete Indian data, we determine that India is the preferred surrogate market in the instant investigation. Therefore, except for certain inputs described below, we have relied on Indian prices to value the Chinese factors of production.

Fair Value Comparisons

To determine whether sales of pencils from the PRC to the United States by China First, Guangdong, SFTC, and Lansheng were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We do not have verified factors of production for a portion of SFTC's U.S. sales discovered at verification. For these sales, we have applied best information available (BIA). (See "Best Information Available" section of this notice.)

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for containerization, loading, port handling expenses and foreign inland freight valued in a surrogate country. In two instances, sales were made on a C&F basis. For these sales, we adjusted for freight expenses.

Foreign Market Value

As discussed above, we calculated FMV, based on the factors of production reported by the factories which produced the subject merchandise for the three exporters. The factors used to produce pencils include materials, labor, and energy. We made adjustments to materials usages to account for the resale of scrap materials, where applicable.

In determining the appropriate surrogate value to assign to each factor of production, we used publicly available published information (PAPI), where possible. The PAPI used was: (1) an average non-export value; (2) most current; (3) product-specific; and (4) tax-exclusive.

The following materials were not valued in India:

Wood

The wood used by the Chinese producers in pencil production (Chinese lindenwood) has been the subject of much debate in this investigation. Wood is the most significant input into a finished pencil. (For the domestic industry, it accounts for approximately 50 percent of the cost.)

Prior to the preliminary determination, we consulted industry experts who told us that jelutong was "quite similar" to lindenwood and that "in price, property and uses, American basswood is nearly indistinguishable from lindenwood." Although we had this information at the time of the preliminary determination, we did not have a surrogate value for basswood. Instead, we used a basket category of woods imported into India to assign a value to lindenwood. This category did not include lindenwood or basswood,

but did include jelutong, which the record indicated was used to produce pencils in Indonesia.

Since the preliminary determination, both respondents and petitioner have provided information on the price and quality of basswood, the most similar wood to lindenwood. The prices are those charged by U.S. producers to U.S. customers. Despite extensive research, no surrogate market or world prices for basswood have been found.

Having determined that basswood is most similar to lindenwood, we have used U.S. basswood prices to value the wood input. Although section 773(c)(4) directs the Department to value the NME factors of production in a comparable surrogate country that is a significant producer of comparable merchandise, this is required only to the extent possible. In this case, where wood is such a significant input and where the only alternative to the basswood price, a price for jelutong, is so much higher than the most comparable wood, we have determined that it is appropriate to use the most comparable wood even though we can only find prices for this input in the United States.

Erasers, Ferrules and Paint

Respondents provided information which led us to question the quality of the Indian PAPI for erasers, ferrules, paint, animal glue and foil. Based on a comparison of the Indian values to the Pakistani values and the values provided in the petition for these inputs (the only other sources of prices for these inputs), we determine that the Indian values for ferrules, erasers and paint were aberrational. Therefore, we valued these factors using Pakistani import statistics (see, Calculation Memorandum, October 31, 1994).

Tallow

Tallow is not imported or, to the best of our knowledge, sold in India or Pakistan. Therefore, we have valued this input in Indonesia. As discussed above, Indonesia has been found to be economically comparable to the PRC and to be a significant producer of pencils.

Non-material Inputs

We used Indian transportation rates to value inland freight between the source of the production factor and the pencil factories, and between factories, where appropriate. In those cases where a respondent failed to provide any information on transportation distances and modes, we applied, as BIA, the most expensive distance/modes combination (*i.e.*, the longest truck rates) that was available in India. We were unable to obtain values for two modes of transportation (man-drawn carts, inland water transport). Therefore, we assumed that these forms were competitive with trucking rates over similar distances.

To value electricity, we used PAPI from the Asian Development Bank on Indian rates. To value coal and natural gas, we used Indian Import Statistics for 1993, the Monthly Statistics of Mineral Production, and the Indian Bureau of Mines dated November 1992, respectively. To value water, we used the Indian industrial schedule from the *Water Utilities Data Book*.

For all material and energy values that were for a period prior to the POI, we adjusted the factor values to account for inflation between the applicable time period and the POI using wholesale price indices published in *International Financial Statistics* (*IFS*) by the International Monetary Fund.

To value labor amounts, we used the International Labor Office's *1993 Yearbook of Labor Statistics*. To determine the number of hours in an Indian workday, we used the *Country Reports: Human Rights Practices for 1990*. We adjusted the factor values to account for inflation between the applicable time period and the POI using the consumer price indices published in *IFS*.

To value factory overhead, we calculated percentages based on elements of industry group income statements from *The Reserve Bank of India Bulletin* (RBI), December 1993. We based our overhead percentage calculations on the RBI data, adjusted to reflect an energy-exclusive overhead percentage. For selling, general and administrative (SG&A) expenses, we calculated percentages based on the RBI data. We used the calculated SG&A percentages because they were greater than the ten percent statutory minimum. However, we used the statutory minimum of eight percent for profit because the profit percentage derived from the RBI data was less than the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses.

We made no adjustments for selling expenses. Packing materials were valued using Indian PAPI. These prices were adjusted to include the freight costs for the delivery of packing materials to the factories producing pencils.

Best Information Available

Because information has not been presented to the Department to prove otherwise, only SFTC, Guangdong, China First and Lansheng are entitled to separate dumping margins. Other exporters identified by the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) have failed to respond to our questionnaire. Lacking responses from these companies, we are basing the PRC country-wide rate on BIA in accordance with section 776(c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins for those respondents which did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina* (*Argentina Steel*), 58 FR 7066, 7069–70 (February 4, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

Here, the non-responding companies failed to cooperate. Therefore, we are assigning to them the highest margin in the petition, as recalculated by the Department for the initiation and on the basis of petitioner's updated information submitted in May 1994. Also, in recalculating the petition rate, we substituted the U.S. basswood price discussed above for the wood value used by petitioner. In making this change we relied on PRC wood usage factors because of the possibility that the amount of wood used to produce a pencil will vary depending on wood type.

We are also applying BIA to a portion of SFTC's sales. SFTC was cooperative in this investigation. However, we are lacking the necessary data for FMV calculations for three sets of pencil sales. We do not find these deficiencies sufficient to call into question the overall reliability of SFTC's data. Therefore, we are applying partial BIA to these sales. As partial BIA, we applied the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents using standard verification procedures, including the

examination of relevant sales and financial records, and original source documentation.

Continuation of Suspension of Liquidation

For China First and Guangdong we calculated a zero margin. Therefore, in accordance with 19 CFR 353.21 and consistent with *Jia Farn Manufacturing Co., Ltd.* v. *United States,* Slip Op. 93–42 (March 26, 1993), we will exclude from the application of any order issued imports of subject merchandise that are sold by either China First or Guangdong and manufactured by the producers whose factors formed the basis for the zero margin. Under the NME methodology, the zero rate for each exporter is based on a comparison of the exporter's U.S. price and FMV based on the factors of production of a specific producer (which may be a different party). The exclusion, therefore, applies only to subject merchandise sold by the exporter and manufactured by that specific producer. Merchandise that is sold by the exporter but manufactured by other producers will be subject to the order, if one is issued. This is consistent with *Jia Farn* which held that exclusion of merchandise manufactured and sold by respondent did not cover merchandise sold but not manufactured by respondent. Therefore, merchandise that is sold by China First or Guangdong but produced by another producer is subject to suspension of liquidation at the "all others" cash deposit rate.

In accordance with sections 733(d)(1) and 735(c)(4) (A) and (B) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of pencils from the PRC that are entered, or withdrawn from warehouse, for consumption on or after March 18, 1994, (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the **Federal Register**), except entries of the excluded merchandise described above. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/ Exporter	Weighted-average margin percentage
China First/Company A	0.00
China First/Any other manufacturer	44.66
Guangdong/Company B	0.00
Guangdong/Any other manufacturer	44.66
SFTC	8.31
Shanghai Lansheng	17.45
All Others	44.66

Critical Circumstances

On August 22, 1994, the Department issued its preliminary determination that critical circumstances exist in this investigation with respect to pencils exported by SFTC, China First, Lansheng, and "all others."

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A) (1) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(2) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Because we have determined that Guangdong and China First in connection with their responding suppliers have not sold cased pencils to the U.S. at less than fair value during the POI, we determine that critical circumstances do not exist with respect to these companies. Therefore, we have limited our analysis of critical circumstances to SFTC and Lansheng.

History of Dumping

As stated in our preliminary determination of critical circumstances, in April 1994, the Government of Mexico published an antidumping duty order on certain cased pencils produced and exported from the PRC. On this basis, we determine that there is a history of dumping elsewhere of the class or kind of merchandise under investigation.

Massive Imports

In accordance with 19 CFR 353.16(f) and 353.16(g), to determine whether imports have been massive over a relatively short period of time, we consider: 1) the volume and value of the imports; 2) seasonal trends (if applicable); and 3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 353(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive."

The U.S. volume and value information submitted by the respondents in this investigation and used by the Department in its preliminary determination of critical circumstances is unchanged. Based on this information, we find that imports of pencils from the PRC have been massive over a relatively short period of time for both SFTC and Lansheng. Also, for the non-responding exporters, we have assumed as BIA that imports have been massive.

Therefore, the statutory criteria for finding critical circumstances have been met for SFTC and Lansheng and all non-responding PRC exporters of pencils.

Interested Party Comments

Comment 1: Respondents argue that section 773(c)(1) of the Act requires the Department to value the specific input used by the PRC producer based on the best available information regarding values in the surrogate country or countries. Absent an acceptable surrogate value for each factor, the Department must consider the use of the exception provided for in the statute at section 773(c)(2) of the Act. This is especially so where, as here, the Department lacks a surrogate value for the single most significant input, lindenwood.

Respondents submit that the Conference Report to what became the Trade and Competitiveness Act of 1988 shows Congress' recognition that in some cases the Department will be unable to develop adequate and usable sources of surrogate factor values (which, in turn, will deprive nonmarket economy producers and exporters of any notion of fairness), requiring resort to the alternative provided in the statute, *i.e.*, export prices of comparable merchandise from an economically comparable country. *See*, Omnibus Trade & Competitiveness Act of 1988—Conference Report, Rep. No. 100–576, 100th Cong., 2d Sess. at 592 (1988). Respondents assert that this Conference Report reflects Congress' desire to provide nonmarket economy countries with some semblance of realism and reasonableness in the determination of their foreign market values.

Petitioner argues that the statute provides a clear preference for the factors of production methodology over the alternative, export prices of

comparable merchandise from an economically comparable country. Petitioner asserts that the Department can only use the export price alternative if the Department finds that the available information is inadequate for purposes of determining the FMV of the subject merchandise. In this case, the price of jelutong is acceptable for valuing the Chinese wood price.

Petitioner claims further that the Indian export data regarding pencils provided by respondents covers too few pencils and provides no information with respect to the quality of those pencils. Therefore, petitioner contends, the Indian export data provide an inadequate basis for determining FMV. The Department should not reject the adequate and detailed surrogate value data in favor of deficient export data.

DOC Position: The statute states that the Department shall "determine the foreign market value of the merchandise on the basis of the value of the factors of production utilized in producing the merchandise," and furthermore that, "the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." *See* section 773(c)(1) of the Act. The Act further provides that, if the Department finds the available information inadequate for purposes of determining foreign market value based on the factors of production, the Department shall base FMV on the price at which comparable merchandise is produced and exported in one or more market economy countries at a comparable level of economic development to that of the nonmarket economy. *See*, section 773(c)(2).

In this investigation, we have determined that we have sufficient information on factor values to rely on the factors of production methodology. Although we do not have a value for the specific wood used by PRC producers, the Department may exercise its discretion in selecting a comparable input by which to value this factor.

In *Ceiling Fans From the People's Republic of China: Notice of Court Decision; Exclusion From the Application of the Antidumping Duty Order, in Part; Termination of Administrative Reviews; and Amended Final Determination and Order* (59 FR 9956, March 2, 1994), the Department stated that ". . . section 773(c)(1) of the Act provides for valuation of factors of production on the best available information from an appropriate surrogate country, not on the basis of perfectly conforming information." In this instance, we have evidence that basswood is virtually indistinguishable from lindenwood. Therefore, as explained in FMV section of this notice, we have used basswood as a surrogate value for lindenwood.

Moreover, we are not persuaded that the use of the statutory exception in this investigation would increase the accuracy of our calculations. The comparison of an average Indian export price with each of the several different pencil types exported to the U.S. by the PRC respondents could lead to significant distortions and inherent unfairness. Because the Indian export price may reflect a wide variety of pencil types, PRC exporters selling lower value-added pencils, *e.g.*, raw or semi-finished, could be severely penalized by such an approach. Similarly, PRC exporters of higher value-added pencils, *e.g.*, colored, foil, or designer, could profit.

Absent some workable method for adjusting the average Indian export price to reflect the differences in merchandise exported by the respondents, we cannot agree that the export price methodology yields a better measure of FMV in this case.

Comment 2: Respondents argue that, if the Department does not use the export price of Indian pencils as FMV, then it must reject the use of jelutong as a surrogate for lindenwood.

Wood is the single most significant input used in the production of wooden cased pencils, as petitioner's own figures demonstrate. All respondents use lindenwood exclusively in the production of pencils. Respondents submit that lindenwood is a very low-quality wood with little alternative commercial use. The basket of woods chosen by the Department in its preliminary determination as a surrogate value for lindenwood is a group of tropical timbers, whereas lindenwood is a temperate hardwood. Respondents submit that, at the very least, the basket of woods should include lindenwood. Therefore, respondents argue that the basket category is unacceptable for use as a surrogate for lindenwood.

Petitioner argues that the Department properly relied upon the price of jelutong for valuing the wood input. Based on the evidence developed by the Department, jelutong is "quite similar" to lindenwood. Also, petitioner asserts that jelutong is used to produce pencils.

Petitioner submits that the Department has previously found it appropriate to rely on available information for the price of a similar input material when surrogate information for the identical material is not available. *See, Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China*, 59 FR 28053, 28058 (May 31, 1994). Thus, according to petitioner, because the record demonstrates that jelutong and lindenwood are similar types of wood, jelutong is an adequate surrogate and meets the statutory requirement.

DOC Position: All parties agree that wood is the single most significant input used in the production of wooden cased pencils. Thus, the Department has taken great care in its determination of the appropriate surrogate value for PRC lindenwood. In light of information submitted by both petitioner and respondents and the Department's own research after the preliminary determination, we determine that the value of jelutong and/or the Indian basket category of tropical woods used in the preliminary determination is not an adequate surrogate for lindenwood. We find the jelutong value inappropriate because our research indicates that, although jelutong is used in pencil production, it is an entirely different genus of wood. Jelutong is a tropical soft timber and lindenwood is a temperate hardwood. Simply because both woods are used to produce pencils does not, in our estimation, indicate that they are comparable in quality or value. Indeed, when the price of jelutong is compared to the price of basswood, the wood identified as most comparable to lindenwood, it reveals that the value of jelutong is not comparable.

Moreover, we note that the Indian import value used for logs in the preliminary determination was based on a basket category. The basket category is made up of seven types of wood; three of these are similar in properties and use to lindenwood, four are not as similar. Therefore, even if we were to agree with petitioner that jelutong is an acceptable surrogate for lindenwood, it is questionable whether this basket price even reflects a value for jelutong.

The price used in the preliminary determination for sawn jelutong, in contrast to the price for logs, is a world market price. Therefore, the problem of jelutong is twofold: it is less similar to lindenwood than is basswood and it is reported in a basket category for one of the two forms in which PRC producers purchased lindenwood.

Comment 3: Petitioner argues that, should the Department decide to use a U.S. price for basswood, it should not use the price provided by respondents. Petitioner argues that the type of basswood described in respondents' submission is not suitable for pencil

production. Specifically, the information submitted by respondents is for grade 4/4 FAS+ (FAS+ indicates highest quality) basswood, whereas pencil production requires at least grade 12/4. In support of this, petitioner points to a study which it submitted which shows that U.S. producers would use 12/4 and 16/4 basswood.

DOC Position: One PRC producer who supplies pencils to a PRC exporter purchases wooden slats, rather than logs or sawn timber, to produce pencils. Slats are thin pieces of wood that are further processed than logs. The U.S. prices we have for basswood which has been processed beyond the log stage (*i.e.*, sawn lumber) are for grade 4/4 (submitted by respondents) and for grades 12/4 and 16/4 (obtained by the Department). None of these grades corresponds to the actual input purchased by the PRC company in question (e.g. slats).

Lacking information on the specific input used by the PRC producer, we have relied on petitioner's study as indicative of the grades of sawn lumber that would be used to produce pencils. Moreover, we also note that the prices submitted by respondents were for September 1994, after the POI.

Petitioner's submission also indicated that U.S. producers would use FAS+ and 1C (number 1 common) quality wood. Therefore, we averaged the prices during the POI of 12/4 and 16/4 basswood at FAS+ and 1C quality levels.

The other PRC producers in this investigation purchase logs of lindenwood for their pencil production. We obtained basswood log price listings during the POI from another publication (*see*, Calculation Memorandum, October 31, 1994) and we used POI prices for log basswood for these producers.

Comment 4: Respondents argue that the Department should review its determination of India as the most appropriate surrogate, and in light of new information, determine that Pakistan is the most appropriate surrogate. Specifically, a comparison of revised 1994 World Bank statistics in the *World Development Report* shows that Pakistan's economy is more comparable to that of the PRC than India's, based on per capita GNP and growth rates. Moreover, the Pakistani factor value data is more timely, *i.e.*, closer to the POI, and reflects larger, "commercially viable" import quantities.

Petitioner claims that India should remain the preferred surrogate because the Department has consistently determined it to be the appropriate surrogate for the PRC, based on the criteria set forth in section 773(c)(4) of the Act. Furthermore, according to petitioner, the statute does not require that the Department choose the *most* comparable surrogate, but rather only that the Department base its surrogate determination on a country: (1) whose economy is comparable to that of the PRC, and (2) which is a significant producer of comparable merchandise. In petitioner's view, Pakistan does not meet the second criterion. Finally, petitioner argues that the Pakistani factor values placed on the record by respondents do not cover all the inputs.

DOC Position: Based on World Bank data, the Department has identified a number of countries that are at a level of economic development comparable to the PRC. Among these comparable countries are Pakistan, India, and Indonesia. We have also determined that Pakistan, India, and Indonesia are significant producers of pencils (see, Concurrence Memorandum, October 31, 1994). Therefore, all three countries meet the statutory criteria for being selected as the surrogate in this investigation.

In this case, India is the country where, in comparison to other potential surrogates, we have been able to obtain values for the overwhelming majority of factors. (Pakistani values were available for approximately half the factors, Indonesia less than that.) Therefore, we have chosen India as our primary surrogate and we are valuing most of the factors there. This is consistent with our practice of attempting to use a single country, where possible, for valuing factors. *See, e.g., Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China*, 57 FR 29705 (July 6, 1992).

We also note that we have been able to obtain Indian data that is contemporaneous with the Pakistani data submitted by respondents. Therefore, while we agree that "timeliness" of the data may be a reason to select one potential surrogate over another, that issue does not arise in this case. (Respondents' comment regarding "commercially viable" amounts is addressed in the context of the Department's decisions with respect to specific factors.)

Comment 5: If the Department continues to use India as the surrogate country, respondents argue that certain Indian factors data are skewed. Therefore the Department should reject these Indian factors in favor of more reasonable, commercially justifiable and current data submitted by respondents. Specifically, they contend that Pakistani factor values for erasers, ferrules, plastic foil, animal glue and paint represent more reasonable surrogate values than the information used by the Department in its preliminary determination. They state that the time period covered by the Pakistani data is broader and more recent, the Pakistani values are based on more commercially viable import volumes, and for erasers, ferrules and animal glue, the Pakistani values are more aligned with the U.S. industry cost data submitted by petitioner.

Petitioner argues that Pakistani data represent a larger volume of merchandise simply because Pakistani tariff categories are broader than Indian tariff categories, which are based on the HTS. Petitioner further asserts that it is the Department's practice to use data from a single country where possible in valuing factors of production. Finally, petitioner claims that it is meaningless that some of the Pakistani data are closer to the costs of the U.S. pencil industry. The United States is not a surrogate country, therefore, U.S. prices are irrelevant to the calculation of FMV.

DOC Position: Although we have selected India as the appropriate surrogate country in this investigation, this does not mean that we are required to use those Indian factor values that we find to be aberrational. We have analyzed the Indian factor values for erasers, ferrules, paint, animal glue, and plastic foil. We compared these factor values with Pakistani and U.S. values based on U.S. costs taken from the petition and found the Indian factor values for erasers, ferrules and paint to be aberrational. (*See*, Calculation Memorandum, October 31, 1994.) Therefore, we have used import statistics from Pakistan, another country which is economically comparable to the PRC and which is a significant producer of comparable merchandise, in order to value these three factors as accurately as possible.

We agree with petitioner that, when possible, the Department's preference is to use a single surrogate market to value the factors of production. However, as stated above, when the facts of a case indicate that this will not permit accurate valuation of the input, we are not required to do so. Where necessary, we have used factor values from multiple countries in a number of recent NME investigations. *See, Final Determination of Sales at Less Than Fair Value: Paper Clips from the People's Republic of China* 59 FR 51168 (October 7, 1994); *Final Determination of Sales at Less Than Fair Value: Headwear from the People's Republic of China* 54 FR 11983 (March 23, 1989); and *Final Determination of Sales at Less Than Fair Value: Shop Towels from the*

People's Republic of China 55 FR 34307 (August 22, 1990).

We disagree with petitioner's claim that U.S. prices are irrelevant. Where, as here, questions have been raised about PAPI with respect to particular material inputs in the chosen surrogate, it is the Department's responsibility to examine that PAPI. To make this examination, we relied on the data on the record—Pakistani and U.S. values. For these inputs, U.S. values served to corroborate the claim that certain Indian PAPI for these factors was unreliable.

Comment 6: Petitioner argues that the Department should use nitrocellulose-based lacquer classified under HTS item number 3208.90.09 to derive a value for the lacquer used by respondents in pencil production. Petitioner submits that given the properties of the two HTS categories of lacquer that have been considered by the Department to value the PRC producer's lacquer, nitrocellulose-based lacquer is the most appropriate.

DOC Position: As stated above, we have found the Indian price for paint (lacquer) to be aberrational and have, therefore, used Pakistani data to value paint. Pakistani import statistics are reported in the Standard International Trade Classification (SITC) format which is a United Nations sanctioned nomenclature. Due to the nature of the SITC system, there are fewer product categories, which means that a greater variety of items is included in each category. Pakistani data on specific subcategories of lacquers are unavailable. The SITC subheading we used was 5334202 which encompasses both the HTS subheading proposed by petitioner and the one used by the Department in the preliminary determination. The description of SITC subheading 5334202 is "lacquers."

Comment 7: Petitioner argues that the Department should rely on the actual expense and profit percentages for the Indian pencil industry, rather than the amounts in the petition, for the calculation of the "all others" rate. The actual data concerning expense and profit percentages is the best available information and, therefore, would provide an "all others" FMV that better reflects the actual surrogate values for these items.

Petitioner further states that the Department should adjust the "all others" rate to reflect transportation costs reported by the Chinese respondents. Petitioner suggests that the Department apply the highest transportation cost, port handling and loading charge, and containerization fee reported by respondents. Petitioners submit that non-responding PRC exporters should not be rewarded for their non-cooperation by receiving the benefit of a margin that does not reflect all costs.

DOC Position: We disagree with petitioner. We do not believe it is appropriate to adjust petition data only where the values would increase. Although an adverse inference is drawn when exporters do not cooperate, this does not mean that the BIA rate should be as high as possible.

In this case we have made one adjustment to the petition data based on surrogate values developed in the course of this investigation. This adjustment was to revalue the wood input using basswood prices. We made this adjustment because, based on what we have learned, the most similar wood to lindenwood is basswood. Having rejected jelutong as a surrogate for lindenwood, it would not be appropriate to use jelutong even in a BIA situation.

Comment 8: Petitioner argues that the Indian import data do not convey the full value of the materials in India because they exclude Indian customs tariffs applicable to these materials. In valuing the imported materials, the Department should apply the *ad valorem* tariff rate imposed by the Indian government.

Respondents argue that both India and Pakistan have drawback schemes whereby exporters are reimbursed for or exempted from the payment of import duties collected on inputs. Thus, the added cost of import duties is not one which would be incurred, and it should not be added to the already inflated values represented in surrogate values derived from Indian import statistics.

DOC Position: We disagree with petitioner. The purpose of the factors methodology is to construct the FMV of NME-produced goods using values in the surrogate country. Theoretically two costs could be calculated—the cost for a domestically sold pencil and the cost of an exported pencil—if the country permits duty free importation of inputs for exports. We are constructing the value of the exported merchandise, therefore, it is appropriate to use the costs the surrogate producer would face in producing exported merchandise. Consistent with our standard practice in this regard, we are not adding the Indian import duties to the values reported in the published Indian import statistics as those duties would have been rebated upon export of the finished products. *See, Final Determination of Sales at Less than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833, 48841–42 (September 20, 1993).

Comment 9: Petitioner claims that respondents belatedly submitted Pakistani import data covering certain of the raw materials used in pencil production on September 13, 1994. Petitioner argues that this information should be rejected by the Department because (1) the time for submitting surrogate value information had long since passed, and (2) under the Department's regulation, factual information submitted after the commencement of verification is untimely and should be rejected. *See* 19 CFR §§ 353.31(a)(1)(i),(b)(3). Petitioner contends that the information was not submitted in response to a current request by the Department, and respondents did not request or receive an extension of the long-expired previous requests for surrogate information. Thus, this information does not fall into one of the narrow exceptions for late submissions included in 19 CFR §§ 353.31(b)(2), (b)(3), of the Department's regulation.

DOC Position: Contrary to petitioner's contention, respondents requested and received an extension by telephone (*See*, Memorandum to File from Team dated September 28, 1994), for the submission of PAPI. Petitioner, in fact, was also granted an extension for the submission of PAPI once an extension was requested.

Comment 10: At verification, it was discovered that a U.S. producer provided one manufacturer with a material input free of charge. Petitioner argues that the Department should assign a value to this input, regardless of whether it was provided free of charge. The Department is required by the statute to include all inputs in the construction of FMV for comparison to U.S. sales.

Respondents contend that the situation in the instant investigation is analogous to a situation where a U.S. customer has a tolling arrangement with a foreign producer. Respondents argue that in such situations the Department has consistently compared the price charged to the U.S. customer—exclusive of materials supplied by the customer to the price charged for similar arrangements in the home market. *See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France* 52 FR 812 (January 9, 1987). Respondents point out that in *Final Determination of Sales of Less Than Fair Value: Brass Sheet and Strip from Korea* 51 FR 40834 (November 10, 1986), the Department stated that "[i]f we were to compare the prices of tolled to non-tolled sales, extensive adjustments would have to be made. For example, if the U.S. transaction is a non

tolled sale, we would have to adjust home market prices for non-tolled sales so that they would reflect in addition the cost of the customer supplied inputs. In the opposite situation, home market prices for non-tolled sales would somehow have to be adjusted downward." Respondents conclude that in this case the Department is constructing a value and not adjusting a price; therefore, any materials supplied by a U.S. customer should not be included in the constructed FMV.

DOC Position: We agree with respondents. The factors of production methodology constructs the value of the subject merchandise as exported. We verified that a certain input in one of the pencils sold to a certain customer was provided free of charge to the producer/exporter. If we were comparing a constructed FMV inclusive of this free input to a U.S. sale to a different customer who had not provided the input, it is possible that an adjustment to FMV would have been warranted. However, this is not the case. We compared the constructed factor value for this pencil type with U.S. sales of this type of pencil to only the customer that provided the input. Therefore, contrary to petitioner's argument, we have correctly valued the NME producers factors of production for this merchandise.

Comment 11: Petitioner argues that the verification report shows numerous substantive material errors in SFTC's questionnaire response. These serious deficiencies warrant the application of comprehensive BIA for SFTC.

Respondents argue that the Department should not resort to total BIA for SFTC as it did in the preliminary determination in this investigation. Respondents argue that SFTC has cooperated fully throughout this investigation and, therefore, the Department should calculate a margin based on the data supplied by the company and verified by the Department.

Respondents argue that where information is either missing or unavailable, the Department should not seek unnecessarily to punish SFTC given the company's cooperative approach in this investigation. The following paragraphs outline the specific data problems and respondents' suggested treatment of these problems.

Prior to verification, the company discovered that it had misreported the pencil producers for a number of transactions. Respondents point out that, upon the commencement of verification, the verifier was informed of this issue. Since, as a result of this misreported information, SFTC was unable to provide factors data for the actual producers for certain transactions, respondents contend that BIA, if applied, should be the highest calculated margin for any of SFTC's pencil sales of similar merchandise, if available. Respondents contend that in the case where similar merchandise is not available, BIA, if applied, should be the highest calculated margin for any SFTC sale.

In addition, at verification the Department found that SFTC incorrectly reported two different suppliers for one transaction. Respondents argue that this discrepancy is minor because SFTC reported and the Department verified data from both suppliers. Therefore, the Department should simply use the verified factors data for the correct supplier, rather than resorting to BIA.

Respondents argue that the discovery at verification that two of SFTC's shipments to the U.S. were shipped C&F, and not FOB, is an oversight of little significance. The data were collected at verification and can now be used to calculate the correct freight for these sales. Similarly, it was discovered that two invoice numbers were incorrect, as reported. Respondents submit that these were typographical errors of no significance.

Finally, at verification it was discovered that SFTC inadvertently excluded a sale of yellow pencils it thought was produced and supplied by a producer whose pencils it was previously permitted to exclude from the sales listing (*See* Memorandum from Elizabeth Graham to Barbara Stafford, dated April 7, 1994). Respondents argue that the Department should use the actual producer's factors data to calculate the margin for this sale. Respondents submit that the Department has paint usage for this supplier, that whether the paint is white or yellow is of no consequence, and that the Department has the appropriate usage rates for ferrules and erasers.

In its supplemental questionnaire response dated May 17, 1994, SFTC notified the Department that portions of reported raw pencil sales had been supplied by a factory previously thought to have supplied only yellow pencils. Respondents submit that, as BIA, the Department should use the highest margin calculated for other sales of raw pencils.

A small number of sample shipments not reported in SFTC's sales response were noted in the sales verification report (*See* SFTC Verification Report, at 5 and Exhibit 11). These shipments were never sold. Therefore, in respondents' view, these invoices should be considered properly excluded from SFTC's sales listing.

DOC Position: Although we found at verification that SFTC had a number of misreported pieces of information, SFTC has made every effort to cooperate in this investigation. In addition, as noted above, we do not find that these deficiencies are sufficient to call into question the overall reliability of SFTC's data. Therefore, contrary to petitioner's assertion, we determine that SFTC's response does not warrant the application of total BIA and we applied partial BIA as described in the BIA section of this notice. However, the partial BIA methodology suggested by respondents would result in assigning a zero margin for sales for which we are missing the necessary factors data. Because such BIA would not be adverse, we find it inappropriate. We are, therefore, applying as partial BIA the petition rate.

With respect to our finding at verification that two U.S. sales were made on C&F terms rather than FOB as reported, we simply adjusted SFTC's freight expenses accordingly.

At both the SFTC verification and the verification of its U.S. sales office, we noted sample shipments of raw pencils. It is the Department's practice to exclude sample sales from its calculations, if evidence exists that the sample sales were not made in substantial quantities. *See, e.g., Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan*, 58 FR 30144 (May 26, 1993), and *Final Determination of Sales at Less Than Fair Value: Sulphur Dyes, Including Sulphur Vat Dyes from the United Kingdom* 58 FR 3253, (January 8, 1993). In this case, we found no evidence that SFTC routinely offers samples to its U.S. customer. Rather, at verification, we established that only a small quantity of raw pencils were provided to the U.S. customer for quality testing. Therefore, we have not treated these sample shipments as U.S. sales.

Comment 12: Respondents argue that the Department was incorrect in its preliminary determination of critical circumstances with respect to imports of pencils into the U.S. from China First, SFTC, and Lansheng. Respondents argue that critical circumstances are not present.

Respondents assert that, on their face, the Mexican dumping findings relied on by the Department are incredible (451 percent) and should be disregarded with respect to the requirement that a history of dumping be found. Furthermore, the Mexican finding was based on BIA, and

the only Chinese producer identified was Guangdong. According to the ITC record, none of the other PRC respondents in the instant investigation was named or participated in the Mexican case or exported significant quantities of pencils to Mexico. Accordingly, China First, SFTC or Lansheng have no history of dumping.

Absent history of dumping, importer knowledge of dumping is required in order for the Department to find critical circumstances. Respondents assert that the final determination in this investigation will reflect dumping margins much lower than those established in the preliminary determination, thus eliminating any suggestion that importers had the required knowledge of dumping.

Finally, respondents contend that the statutory phrase "relatively short period of time" was meant to denote a period of time in the post-filing period which was shorter than the pre-filing period used for comparison. By comparing equivalent periods of time prior to and after the filing of the petition, the Department has exceeded its statutory authority. Therefore, the Department should modify its methodology for the final determination.

Petitioner argues that respondents have not explained why Mexican antidumping proceedings are inherently suspect. The size of the margins found in the Mexican proceeding is not relevant; what is relevant is that Mexico, a signatory to the General Agreement on Tariffs and Trade (GATT) Antidumping Code, issued an affirmative finding of dumping. This meets the statutory standard for history of dumping. It is immaterial whether a particular foreign exporter is named in a third country antidumping finding, or does not export to that third country.

Petitioner takes issue with respondents' claim that the "relatively short period of time" phrase "was meant to denote a period of time in the post-filing period which was shorter than the pre-filing period used for comparison." Congress identified the statutory "relatively short period" as that between the commencement of an investigation and the preliminary determination. H.R. Rep. No. 96–317, 96th Cong., 1st Sess. 63 (1979). The Department's regulation comports with the legislative purpose. *See*, 19 CFR 353.16(g). Respondents have failed to demonstrate that the regulation is neither reasonable nor a proper exercise of the Secretary of Commerce's discretion. *See Smith-Corona Group* v. *United States*, 713 F.2d 1568 (Fed. Cir. 1983). Petitioner argues that in order to make its determination, Commerce must compare the post-filing period with a similar "normal" period before the case began.

Finally, petitioner submits that the statute directs the Department to determine whether "there have been massive imports of the merchandise which is the subject of investigation over a relatively short period." *See* section 735(a)(3) of the Act. Petitioner argues that the Department is directed to analyze the subject merchandise as a whole, and that there is no provision for the exception of individual exporters when the massive imports criterion is met. Thus an affirmative final critical circumstances determination is warranted for all exporters, including Guangdong in this investigation.

DOC Position: We disagree with respondents' assertion that the Mexican antidumping determination with respect to pencils from the PRC should be disregarded by the Department. On the contrary, the Mexican determination meets exactly the statutory requirement under section 733(e)(1) of the Act with respect to a history of dumping of the class or kind of merchandise under investigation in the United States or elsewhere. Moreover, with respect to respondents' assertion that the Mexican finding identified only one respondent, we note that the order exists as to pencils from the PRC and not as to one particular respondent. Therefore, we do not believe that we should single out only those producers specifically mentioned in the Mexican finding.

We disagree with respondents' contention that the Department exceeded its statutory authority in selecting an equal period of time before and after the filing of the petition in this investigation. The Department acted in accordance with the requirements of the statute and past practice by examining equal time periods to determine whether or not imports of pencils from the PRC have been massive over a relatively short period of time. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China*, 59 FR 39727 (August 4, 1994) and *Final Determination of Sales at Less Than Fair Value: Industrial Belts from Italy*, 54 FR 15483 (April 18, 1989).

Finally, we disagree with petitioner's assertion that the Department is statutorily required to determine the existence of critical circumstances on an aggregate basis. When company-specific information is available, we conduct our analysis on a company-specific basis. In the event that such information is not available, we use the most specific information available in making our critical circumstances determination. In this investigation, we have reached our critical circumstances determination on a company-specific basis because respondents provided the information which permitted us to do so.

Comment 13: Petitioner argues that the Department should explicitly provide in its final determination that Chinese pencils transshipped through Hong Kong are within the scope of this investigation.

DOC Position: The scope of the order, if one is issued, will cover certain cased pencils produced in the PRC. The fact that the PRC pencils are transshipped through a third country en route to the U.S. would not alter the fact that they are PRC-produced pencils subject to the order. Therefore, Chinese produced pencils that are transshipped through Hong Kong (or any other country) are within the scope of this investigation and are subject to any antidumping duties imposed as a result of this proceeding.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing U.S. Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27667 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–796–601]

Carbon Steel Wire Rod From Zimbabwe; Determination Not To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Determination Not to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Mercedes Fitchett, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1994, the Department published in the **Federal Register** (59 FR 38584) its intent to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe (51 FR 29292). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation and no interested party requests an administrative review by the last day of the fifth anniversary month.

Within the specified time frame, we received objections from domestic interested parties to our intent to revoke this countervailing duty order. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: November 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27679 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–005]

Frozen Concentrated Orange Juice From Brazil; Intent To Terminate a Suspended Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Terminate a Suspended Countervailing Duty Investigation.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to terminate the suspended countervailing duty investigation on frozen concentrated orange juice from Brazil. Domestic interested parties who wish to object to the termination of the suspended countervailing duty investigation must submit their comments in writing not later than 30 days from the publication date of this notice.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Linda Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 or 3833; telefax: (202) 482–1388.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1983, the Department published in the **Federal Register** an agreement suspending the countervailing duty investigation on frozen concentrated orange juice from Brazil (48 FR 8839). The Department has not received a request to conduct an administrative review of the agreement suspending this countervailing duty investigation on frozen concentrated orange juice from Brazil for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii)(1994), the Secretary of Commerce will conclude that a suspended investigation is no longer of interest to interested parties and will terminate the agreement and the underlying suspended investigation if no domestic interested party objects to termination or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by section 355.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to terminate this suspended countervailing duty investigation.

Opportunity to Object

No later than 30 days after the publication date of this notice, domestic interested parties, as defined in section 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to terminate this suspended countervailing duty investigation. Any submission objecting to a revocation must contain the name and case number of the proceeding and a statement explaining how the objecting party qualifies as a domestic interested party under section 355.2(k)(3), (4), (5), or (6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties object to the Department's intent to terminate the suspended investigation, we shall conclude that the suspension agreement is no longer of interest to interested parties and shall proceed with the termination.

This notice is published in accordance with 19 CFR 355.25(d)(4)(i).

Dated: November 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27666 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–614–501]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Determination Not To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Determination Not to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Mercedes Fitchett, Office of Countervailing Compliance,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1994, the Department published in the **Federal Register** (59 FR 38584) its intent to revoke the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 31638). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation and no interested party requests an administrative review by the last day of the fifth anniversary month.

Within the specified time frame, we received objections from domestic interested parties to our intent to revoke this countervailing duty order. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: November 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27678 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 102794B]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will hold separate meetings to discuss the Conch Fishery Management Plan (FMP).

The SSC will meet on November 22, 1994. The AP will meet on November 23, 1994. The meetings will be held at the Pierre Hotel, San Juan, PR. Both meetings will begin at 10 a.m. and will adjourn at 4 p.m.

The meetings are open to the public, and will be conducted in the English language. However, simultaneous translation (English-Spanish) will be available at the AP meeting.

Fishers and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918; telephone: (809) 766–5926, at least 5 days prior to the meeting date.

Dated: November 2, 1994.

David S. Crestin,

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

[FR Doc. 94–27655 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 102794C]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council and its Administrative Committee will hold separate meetings. The Council will hold its 83rd regular public meeting to discuss the Draft Queen Conch Fishery Management Plan, among other topics.

The Council will convene on November 30, 1994, from 9 a.m. until 5 p.m. and on December 1, from 9 a.m. until approximately 12 noon.

The Administrative Committee will meet on November 29, 1994 from 2 p.m. until 5 p.m., to discuss administrative matters regarding Council operation.

Both meetings will be held at the Conference Room of the Parador Villa Parguera, in La Parguera, Lajas, PR.

The meetings are open to the public, and will be conducted in English. However, simultaneous translation (Spanish-English) will be available during the Council meeting (November 30 through December 1). Fishermen and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918; telephone: (809) 766–5926, at least 5 days prior to the meeting date.

Dated: November 2, 1994.

David S. Crestin,

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

[FR Doc. 94–27656; Filed 11–7–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 102894B]

Marine Mammals

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

ACTION: Receipt of application to modify permit No. 813 (P523).

SUMMARY: Notice is hereby given that Mr. Adam S. Frankel, University of Hawaii at Manoa, Department of Oceanography, 1000 Pope Road, Honolulu, HI 96822, has requested a modification to permit No. 813.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a

hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit No. 813, issued on February 1, 1993 (58 FR 7548), and modified on August 2, 1993 (58 FR 42300), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 813 authorizes the Permit Holder to potentially harass up to 1,000 humpback whales (*Megaptera novaeangliae*) during the course of playback experiments and photo-identification/observational studies through September 30, 1994. On September 20, 1994, notice was published (59 FR 48299) that the Permit Holder was requesting: An additional 1-year extension of the permit, authorization to conduct the research off the island of Kauai rather than Hawaii, and authorization to conduct playback experiments on sperm whales (*Physeter macrocephalus*). The Permit Holder is now amending that modification request for authorization to harass the following species incidental to the proposed playback experiments on humpback and/or sperm whales: Bottlenose dolphins (*Tursiops truncatus*), spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), false killer whales (*Pseudorca crassidens*), green sea turtles (*Chelonia mydas*), leatherback turtles (*Dermochelys coriacea*), and hawksbill turtles (*Eretmochelys impricata*).

Dated: November 2, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–27595; Filed 11–7–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 101994A]

Small Takes of Marine Mammals Incidental to Specified Activities

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Washington State Department of Corrections (WDOC) for authorization to take small numbers of harbor seals by harassment incidental to the nonexplosive demolition of the Still Harbor Dock Facility on McNeil Island in southern Puget Sound. Under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the WDOC to incidentally take by harassment a small number of harbor seals in the vicinity of Gertrude Island for a period of 1 year, provided certain mitigation measures are incorporated into the project.

DATES: Comments and information must be received no later than December 8, 1994.

ADDRESSES: Comments on the application should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application and the Environmental Assessment (EA) may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Brent Norberg, Northwest Regional Office at 206–526–6733.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if the Secretary finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, the Marine Mammal Protection Act Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> * * * any act of pursuit,torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Background of Request

The Still Harbor Dock Facility is utilized by the WDOC as a foul weather landing facility for the McNeil Island Corrections Center.[1] Significant deterioration of the existing facility, including the collapse on May 24, 1994, of the steel-pile-supported concrete center portion of the facility, has resulted in the need for major renovation in order to maintain a safe, functional facility. The renovation will include demolition of the existing facility; construction of a new pile-supported concrete access trestle approximately 520 ft long by 20 ft wide and pierhead 165 ft long by 35 ft wide; a new 70 ft long by 30 ft wide concrete float with gangway and steel guide pile system; a new 50 ft long by 48 ft wide boathouse and concrete floats with gangway and steel guide pile system; and new waterlines, electrical power, and lighting. All new structures will be constructed within the footprint of the existing facility. Approximately 525 steel and timber pilings will be removed and replaced with approximately 152 new concrete, steel, and plastic piles. Additional information on the dock facility and the corrections center in general can be obtained by referring to the Final Environmental Impact Statement published by the WDOC in 1989 in compliance with the State Environmental Policy Act of 1971 (Chapter 43.21C, Revised Code of Washington).

[1] The Quitclaim Deed which transferred the property from Federal to state control, limits the use of the Still Harbor Dock to emergency situations because of the Gertrude Island harbor seal population.

Summary of Request

On August 18, 1994, the WDOC applied for an authorization under section 101(a)(5)(D) of the MMPA, for the take of a small number of harbor seals by harassment incidental to the demolition of the existing dock facility and the driving of approximately 152 concrete, plastic, and steel piles (90 concrete, 40 plastic, and 22 steel) of the Still Harbor Dock Facility on McNeil Island in southern Puget Sound, WA. In an effort to minimize noise from these activities, no explosives will be used for demolition and each concrete and plastic pile will be water jetted several feet into the substrate, then driven the final 3 ft into the set position. The 22 steel piles must be driven the entire depth (30 ft) to meet load requirements. The dock removal and construction schedules were developed to avoid reproductively sensitive life history periods of several species of wildlife, including harbor seals. The demolition and pile driving activities are anticipated to be completed in two season's specified work window from November 1 to February 15, 1994–95, for demolition and November 15 to February 15, 1995–96, for pile driving. However, because an authorization issued under section 101(a)(5)(D) of the MMPA is limited to a maximum of 1 year, a second application from the WDOC will be necessary to commence pile driving and construction of the dock facility. Therefore, this small take authorization, if granted, will only cover the demolition of the collapsed portion of the existing pier facility.

Alternatives to the Proposed Action

No alternative options for the foul weather dock and moorage have been identified by the WDOC for McNeil Island. Without the availability of the foul weather dock, prisoners, visitors, staff and supplies would be unable to land on the island until the weather cleared. In addition, management of McNeil Island by the state as a wildlife preserve and sanctuary prohibits any new road construction for an alternative dock location under the Wildlife Restriction terms in the Quitclaim Deed of the property.

Harbor Seals

The harbor seal (*Phoca vitulina*) is the only marine mammal species anticipated to be taken by the demolition of the Still Harbor Dock Facility. Gertrude Island is a low-tide, haulout, and rookery used by harbor seals of various ages. The southern part of the island is located approximately 1,100 ft from the Dock. The type of taking anticipated will be incidental harassment caused by the noise of demolition work. It is anticipated that the seals may be disturbed upon initiation of demolition activities on a daily basis, until they become acclimated to the activity. The number of seals disturbed will vary with tidal elevation at the time of initiation of the activity and is anticipated to be a subset of the peak total counts.

Harbor seals are the most abundant pinniped in Washington State. Since passage of the MMPA in 1972, harbor seal populations in the inland waters of Washington have increased significantly. From 1983 to 1992, the Washington inland waters stock of harbor seals increased at an annual rate of 6.1 percent (NMFS, 1994; Huber *et al.*, in prep.).[2] Boveng (1988) and NMFS (1991) estimated the minimum harbor seal population for the state's inland waters to be 6,062. More recently, NMFS (1994) estimates the inland population at 13,833 giving it a minimum population size estimate of 13,053. Puget Sound pup counts numbered 35 in 1977 and showed a +.22 annual rate of change to 142 pups in 1984 (NMFS, 1992). South Puget Sound pup counts are presently increasing at a +.58 annually from 365 total (25 pups) in 1984 to 706 total (78 pups) in 1992 (NMFS data). Harbor seals occupy all nearshore areas of Puget Sound, including McNeil and Gertrude Islands throughout the year. Current data from the Washington Department of Fish and Wildlife (WDFW) and NMFS on Gertrude Island total seal counts over the last 5 years (1988–1993) indicate peak use in September and the lowest use in February. The most current data on maximum numbers of harbor seals using the Gertrude Island haulout during the demolition work window varies from 215 to 634, depending on the month (NMFS data). Seasonal increases at Gertrude Island have been ascribed to the onset of pupping and molting seasons, and a movement of seals from other haulout sites as disturbances increase during the summer (Jones and Stokes, 1989). The pupping season for the Gertrude Island herd extends from late July to late September, and the molting season extends from early October to early December (Newby, 1971; Skidmore and Babson, 1981– both as cited in Jones and Stokes, 1989).

The impact to the harbor seal stock would be disturbance by sound which is anticipated to result in a negligible short-term impact to small numbers of harbor seals. When harbor seals are frightened by noise, or the approach of a boat, plane, human, or other potential predator, the seals will move rapidly to the relative safety of the waters. Depending upon the severity of the disturbance, seals may return to the original haulout site immediately, stay in the water for some length of time before hauling out, or haul out in a different area (Johnson, 1977; Skidmore and Babson, 1981 both as cited in Jones and Stokes, 1989). Disturbances tend to have a more serious effect when herds are pupping or nursing, when aggregations are dense, and during the molting season (Jones and Stokes, 1989).

Short-term impact of the activities is expected to result in a temporary reduction in utilization of the haulout while work is in progress or until the seals acclimate to the disturbance. The specific activities will not result in any reduction in the number of seals, and they are expected to continue to occupy the same area of Gertrude Island. The abandonment of Gertrude Island as a harbor seal haulout and rookery is not anticipated due to the existing level of human activity on and around the dock for over 50 years (Jones and Stokes, 1989). Human activity increases annually in the late fall and winter months as use of the dock facility increases as a foul weather moorage for WDOC passenger ferries, barges, tugboats, and patrol boats.

In addition, the activities are anticipated to have no long-term impact on the habitat of harbor seals. No direct physical impact to the habitat will occur due to the dock reconstruction as all new facilities will occur within the footprint of the original structure. Mitigation measures (discussed below) under an MMPA Incidental Harassment Authorization are expected to reduce any impacts to a negligible level.

There has been no known subsistence use of the McNeil Island area or Gertrude Island.

Mitigation

Efforts to ensure negligible impact of the dock renovation project on harbor seals identified by the WDOC and proposed for inclusion in the Incidental Harassment Authorization include:

1. A November 1—February 15 work schedule to avoid adversely affecting harbor seals during the pupping and nursing season (July 15 to October 15);
2. A 1,000-ft no-entry buffer zone around Gertrude Island to minimize the impact of vessel traffic on harbor seals during the project (the buffer zone will be delineated by floats);
3. Construction activities and seal behavior will be monitored by marine

[2] Reference citations can be found in the EA on this action (see ADDRESSES).

biologists to ensure that impacts on seals will be minimal;

4. The demolition will not utilize any explosives;

5. The removal of material and debris will be in the largest sizes possible and the removed materials will be transported off site for disposal; and

6. To mitigate noise levels and thereby impacts to harbor seals, all construction equipment should comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency (EPA, 1974) and all construction equipment should have noise control devices (e.g., mufflers) no less effective than those provided on the original equipment.

Monitoring

The Gertrude Island haulout has been the site of several research projects for a number of years. Current research efforts by NMFS and WDFW include a radio tag study to learn about feeding behavior of the seals. A cooperative monitoring program by NMFS and WDFW is presently under discussion; alternatively, WDOC may contract with a private contractor to monitor activities. In addition, NMFS proposes to require WDOC to notify the Agency and the WDFW prior to work in order to coordinate monitoring of potential disturbance to seals.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for the demolition of the collapsed portion of the Still Harbor Dock Facility located on McNeil Island in the State of Washington, provided the above mentioned mitigation measures and reporting requirements are incorporated. NMFS has preliminarily determined that the demolition of the Still Harbor Dock Facility would result in the harassment taking of only small numbers of harbor seals, will have a negligible impact on the harbor seal stock and will not have an unmitigable adverse impact on the availability of this stock for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request.

Dated: November 1, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–27654 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–22–W

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps State and Direct Grant Program, Learn and Serve America K–12 Grant Program, and Learn and Serve America Higher Ed Grant Program 1995 Policies and Priorities

ACTION: Notice correction.

SUMMARY: The Corporation for National and Community Service (the Corporation) in the Federal Register of October 27, 1994 (59 FR 53963) has proposed changes and invited comments with regard to three of its main programs: AmeriCorps*USA, Learn & Serve America K–12, and Learn & Serve America Higher Education. The notice was divided into three parts corresponding to these programs. The proposed changes—which would apply to the FY 1995 grant cycle—were developed in response to lessons learned with the completion of the Corporation's first grant cycle and are non-regulatory in nature. The Corporation invited all interested parties to comment on the issues discussed in that notice. Any comments received will be given careful consideration in the development of final FY 1995 policies and grant applications. In that previous notice the 1994 issue area priorities for renewal proposals were incorrect. The purpose of this notice is to replace the published renewal priorities with the 1994 priorities previously established by the Corporation.

DATES: Comments on the Corporation's AmeriCorps State and Direct Grant Program, and Learn and Serve America Higher Ed Grant Program 1995 policies and priorities must be received no later than November 28, 1994. Due to application deadlines, comments on the Learn and Serve America K–12 Grant Program 1995 policies and priorities must be received no later than November 14, 1994.

ADDRESSES: Responses to this notice may be mailed to the Office of AmeriCorps Programs, The Corporation for National Service, 1110 Vermont Avenue, N.W. Washington, D.C. 20525, between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rusty Greiff, General Counsel's Office, at (202) 606–5000 x. 256 between the hours of 9 a.m. and 6 p.m. Eastern Standard Time. For individuals with disabilities, information will be made available in alternative formats, upon request.

SUPPLEMENTARY INFORMATION: In FR DOC. 94–26588 make the following correction on page 53965. In the first column (D of part I), the priority areas for renewal are corrected to read as follows:

1. Education
   a. School Readiness—Furthering early childhood development.
   b. School Success—Improving the educational achievement of school-age youth and adults who lack basic academic skills.
2. Public Safety
   a. Crime Control—Improving criminal justice services, law enforcement, and victim services.
   b. Crime Prevention—Reducing the incidence of violence.
3. Human Needs
   a. Health—Providing independent living assistance and home- and community-based health care.
   b. Home—Rebuilding neighborhoods and helping people who are homeless or hungry.
4. Environment
   a. Neighborhood Environment—Reducing community environmental hazards.
   b. Natural Environment—Conserving, restoring, and sustaining natural habitats.

Dated: November 3, 1994.

Terry Russell,

General Counsel.

[FR Doc. 94–27682 Filed 11–4–94; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Global Positioning System (GPS)

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Global Positioning System (GPS) will meet in closed session on November 15–16, 1994 at the ANSER Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review and recommend options available to improve GPS jam resistance with particular emphasis on GPS tactical weapon applications. The main focus of the Task Force shall be the investigation of techniques for improving the resistance of GPS embedded receivers in tactical missiles and precision munitions and their delivery platforms.

In accordance with section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: November 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27625 Filed 11–7–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Concurrency and Risk Assessment on F–22 Program

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Concurrency and Risk Assessment on F–22 Program will meet in closed session on November 16–17, 1994 at the Lockheed Facilities, Marietta, Georgia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will access the concurrency and risk assessment of the F–22 program.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: November 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27624 Filed 11–7–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS) Meeting.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the status of recommendations made by the Committee at the DACOWITS 1994 Fall Conference, review the Subcommittee Issues Agenda, and discuss other issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: December 5, 1994, 8:30–4:00 p.m.

ADDRESSES: PBC Conference Room 3A682, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Martha C. Gillette, USN, Office of DACOWITS and Military Women Matters, OUSD (Personnel and Readiness), The Pentagon, Room 3D769, Washington, DC 20301–4000, Telephone (703) 697–2122.

Dated: November 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27623 Filed 11–7–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 179. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 180 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 1994.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The Text of the Bulletin Follows:

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 10	$ 34	$ 44	10-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
06-01--09-15	147	64	211	06-01-94
09-16--05-31	81	57	138	05-01-94
ANIAK	73	36	109	07-01-91
ATQASUK	129	86	215	12-01-90
BARROW	105	83	188	11-01-93
BETHEL	76	67	143	02-01-94
BETTLES	65	45	110	12-01-90
COLD BAY	110	54	164	07-01-93
COLDFOOT	95	59	154	10-01-92
CORDOVA	60	81	141	01-01-94
CRAIG	67	35	102	07-01-91
DENALI NATIONAL PARK	113	68	181	05-01-94
DILLINGHAM	85	64	149	11-01-93
DUTCH HARBOR-UNALASKA	113	67	180	05-01-92
EIELSON AFB				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
ELMENDORF AFB				
06-01--09-15	147	64	211	06-01-94
09-16--05-31	81	57	138	05-01-94
EMMONAK	62	61	123	10-01-93
FAIRBANKS				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
06-01--09-15	147	64	211	06-01-94
09-16--05-31	81	57	138	05-01-94
FT. WAINWRIGHT				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
HOMER				
05-01--09-30	71	60	131	05-01-94
10-01--04-30	60	58	118	02-01-94
JUNEAU				
04-30--09-14	92	74	166	04-30-94
09-15--04-29	78	73	151	01-01-94

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
KATMAI NATIONAL PARK	$ 89		$ 59		$148	12-01-90
KENAI-SOLDOTNA						
04-02--09-30	104		74		178	04-02-94
10-01--04-01	67		71		138	01-01-94
KETCHIKAN						
04-01--09-30	82		71		153	04-01-94
10-01--03-31	69		70		139	01-01-94
KING SALMON 3/	75		59		134	12-01-90
KLAWOCK	75		36		111	07-01-91
KODIAK	74		65		139	01-01-94
KOTZEBUE	133		87		220	05-01-93
KUPARUK OILFIELD	75		52		127	12-01-90
METLAKATLA						
06-01--10-01	95		58		153	06-01-94
10-02--05-31	72		56		128	02-01-94
MURPHY DOME						
05-15--09-15	106		59		165	05-15-94
09-16--05-14	68		55		123	01-01-94
NELSON LAGOON	102		39		141	06-01-91
NOATAK	133		87		220	05-01-93
NOME	71		67		138	10-01-93
NOORVIK	133		87		220	05-01-93
PETERSBURG						
04-16--10-14	77		56		133	05-01-94
10-15--04-15	72		56		128	10-15-94
POINT HOPE	99		61		160	12-01-90
POINT LAY 6/	106		73		179	12-01-90
PRUDHOE BAY-DEADHORSE	73		60		133	11-01-93
SAND POINT	64		67		131	08-01-94
SEWARD						
05-01--09-30	90		65		155	05-01-94
10-01--04-30	52		62		114	01-01-94
SHUNGNAK	133		87		220	05-01-93
SITKA-MT. EDGECOMBE	79		71		150	01-01-94
SKAGWAY						
04-01--09-30	82		71		153	04-01-94
10-01--03-31	69		70		139	01-01-94
SPRUCE CAPE	74		65		139	01-01-94
ST. GEORGE	100		39		139	06-01-91

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LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
ST. MARY'S	$ 77		$ 59		$136	06-01-93
ST. PAUL ISLAND	62		63		125	10-01-93
TANANA	71		67		138	10-01-93
TOK						
05-02--09-30	60		58		118	05-02-94
10-01--05-01	51		57		108	01-01-94
UMIAT	97		63		160	12-01-90
VALDEZ						
05-01--09-14	95		61		156	05-01-94
09-15--04-30	79		59		138	01-01-94
WAINWRIGHT	90		75		165	12-01-90
WALKER LAKE	82		54		136	12-01-90
WRANGELL						
04-01--09-30	82		71		153	04-01-94
10-01--03-31	69		70		139	01-01-94
YAKUTAT	77		58		135	11-01-93
OTHER 3, 4, 6/	63		48		111	01-01-93
AMERICAN SAMOA	73		48		121	11-01-94
GUAM	155		75		230	05-01-93
HAWAII:						
ISLAND OF HAWAII: HILO	73		61		134	06-01-93
ISLAND OF HAWAII: OTHER	80		71		151	06-01-93
ISLAND OF KAUAI						
04-01--11-30	110		75		185	06-01-93
12-01--03-31	122		76		198	12-01-93
ISLAND OF KURE 1/			13		13	12-01-90
ISLAND OF MAUI						
04-01--11-30	79		71		150	06-01-93
12-01--03-31	96		73		169	12-01-93
ISLAND OF OAHU	105		62		167	06-01-93
OTHER	79		62		141	06-01-93
JOHNSTON ATOLL 2/	22		22		44	08-01-94
MIDWAY ISLANDS 1/			13		13	12-01-90
NORTHERN MARIANA ISLANDS:						
ROTA	48		77		125	05-01-94
SAIPAN	89		80		169	05-01-94
TINIAN	50		72		122	05-01-94
OTHER	20		13		33	12-01-90

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
PUERTO RICO:				
BAYAMON				
05-01--11-24	$107	$ 75	$182	11-01-94
11-25--04-30	130	77	207	11-25-94
CAROLINA				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
SABANA SECA				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
OTHER 7/	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.:				
ST. CROIX				
04-15--12-14	119	73	192	08-01-94
12-15--04-14	169	78	247	12-15-94
ST. JOHN				
06-01--12-14	255	78	333	11-01-94
12-15--05-31	370	90	460	12-15-94
ST. THOMAS				
04-17--12-17	141	106	247	08-01-94
12-18--04-16	220	114	334	12-18-94
WAKE ISLAND 2/	30	25	55	10-01-94
ALL OTHER LOCALITIES	20	13	33	12-01-90

BILLING CODE 5000-04-C

FOOTNOTES

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of Government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily rate
DOD personnel	$13
Non-DOD Personnel	$30

[7] (Eff 9–1–94) A per diem rate of $200 (lodging $148; M&IE $52) will be in effect for Las Croabas, Puerto Rico, during the Annual Conference of the National Association of State Boating Law Administrators (NASBLA) being held at the El Conquistador Resort and Country Club. This rate will be in effect from 4–12 September 1994 only for travelers attending the conference and only for travelers staying at the El Conquistador Resort.

Dated: November 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27626 Filed 11–7–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Patent Available for Licensing

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patent. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Issued patent	Title	Issue date
5,255,869	Self-Heating Group Meal Assembly and Method of Using Same.	Oct. 18, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the above listed patent, please contact either Mr. Vincent J. Ranucci, Patent Counsel or Ms. Jessica M. Niro, Paralegal Specialist at (508) 651–4510, FAX (508) 651–5167 or by writing to the U.S. Army Natick Research, Development and Engineering Center, Office of Chief Counsel, Attn: V. Ranucci/J. Niro, Natick, MA 01760–5035.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 94–27639 Filed 11–7–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Administrative Law Judges; Intent To Compromise Consolidated Claims; Washington State Library

AGENCY: Department of Education.

ACTION: Notice of Intent to Compromise Consolidated Claims.

SUMMARY: The U.S. Department of Education (the Department) intends to compromise consolidated claims against the Washington State Library (WSL) in a consolidated appeal which is now pending before the Department's Office of Administrative Law Judges (the OALJ), Docket Nos. 90–92–R (ACN: 10–83457) and 91–43–R (ACN:10–83572), under authority of section 452(j)(1) of the General Education Provisions Act (20 U.S.C. 1234a(j)(1) (1988)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before December 23, 1994.

ADDRESSES: Comments should be addressed to Ronald Petracca, Esq., Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5421, Washington, D.C. 20202. Telephone (202) 401–8316.

FOR FURTHER INFORMATION CONTACT: Ronald Petracca, Esq., at (202) 401–8316. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The consolidated claims in question initially arose from an organization-wide audit of the WSL conducted by the Washington State Auditor (State Auditor) for the periods July 1, 1985 to June 30, 1986 (ACN:10–83457) and July 1, 1986 to June 30, 1987 (ACN:10–83572). The audits were conducted pursuant to the Single Audit Act of 1984 and Office of Management and Budget Circular No. A–128.

In reviewing the State's administration of programs under Title I of the Federal Library Services and Construction Act (LSCA) (assistance to States for public library services), the State Auditor found that the WSL had failed to use an accurate method for allocating certain costs as among Title I LSCA programs and other programs, and had failed to keep accurate records sufficient to enable auditors to determine how those costs had in fact been allocated. The auditors determined that this failure to allocate costs properly was a violation of applicable Federal regulations (OMB Circular A–87, 34 CFR Part 74 Appendix C, Part I Section J (1986), now incorporated by reference in 34 CFR 80.22(b)). In an audit report dated August 29, 1988, the auditors questioned costs in the amount of $450,613, representing the amounts of the salaries of employees dividing their time between Title I LSCA and other programs. On October 16, 1990, the U.S. Department of Education's Assistant Secretary for Educational Research and Improvement (Assistant Secretary) issued a program determination letter (PDL) sustaining the State Auditor's finding, and demanding recovery of $450,613. The WSL timely appealed that

determination to the OALJ pursuant to 20 U.S.C. 1234(f)(1).

In 1988, the State Auditor conducted a similar audit for the State fiscal year 1987; a final audit report was issued by the State Auditor on August 29, 1988. The State Auditor found that certain funds had not been expended by the WSL within the time period prescribed by 20 U.S.C. 1225(b) (the "Tydings Amendment") and the implementing regulations in 34 CFR 76.705. The questioned costs were $15,103. The State Auditor further found that the legal violations of Federal regulations governing cost allocation, which were discussed in connection with Docket No.90–92–R, above, had continued in fiscal year 1987, resulting in questioned costs of $675,961. The State Auditor also determined that an amount of $15,103 had been obligated in violation of 20 U.S.C. 1225 (prescribing the time limit for obligation of funds by the grantee). In a PDL dated April 25, 1991, the Assistant Secretary sustained these audit findings and demanded repayment of $691,064. The WSL timely appealed these determinations to the OALJ.

Because the issues in the two audit appeals were similar, the OALJ consolidated the two appeals. Subsequently the litigation was stayed at the joint request of the parties so that the facts could be clarified. At the Department's request, the State Auditor conducted special (supplemental) audits for both of the fiscal years in question, reviewing the same records which had been reviewed in the previous audits. The State Auditor issued a report of the special audit of fiscal year 1986 on July 28, 1992. In this report the State Auditor found that the recovery amount of $450,613 should be reduced to $164,540. The reasons for the revised finding were that the original recovery amount was found to have included $243,707 which were allowable costs for goods and services, and that the original recovery amount was found to have included $42,366 in allowable personnel costs.

With respect to fiscal year 1987, the State Auditor issued special audits on July 28, 1992. The State Auditor found that the originally determined questioned cost amount totalling $691,064 should be reduced. The $15,103 finding was reduced to $2,230. The other questioned costs pertaining to improper recordkeeping were determined to be $384,398. With respect to the latter finding, the original questioned cost amount was determined to have erroneously included $247,602 in allowable direct costs for goods and services. In addition, the original recovery amount was found to have included $43,961 in allowable personnel costs.

The Office of the Inspector General, U.S. Department of Education, verified the findings in the special audits after conducting a site visit and reviewing the State Auditor's workpapers. Based on the supplemental audit findings, the parties stipulated to the OALJ on February 1, 1993, that the questioned costs in issue for fiscal year 1986 should be reduced from $450,613 to $164,540; and that the questioned costs in issue for fiscal year 1987 should be reduced to $386,628.

In the course of ensuing settlement discussions, the WSL submitted documentary evidence that it had corrected the practices which had generated the State Auditor's findings of improper record-keeping. As a result of settlement discussions, the parties have tentatively agreed to a settlement under which the WSL has promised to repay a total of $49,362 for the findings pertaining to fiscal year 1986, and $186,740 for the findings related to fiscal year 1987—a total of $236,102 to the Department for both years, in full resolution of all issues.

In addition to the repayment of funds, the State has certified in the tentative settlement agreement that it is currently in compliance with all legal requirements pertaining to the practices and procedures that gave rise to the disallowances in question in this consolidated appeal.

In accordance with the authority provided in 20 U.S.C. 1234a(j)(1), the Department has determined that it would not be practical or in the public interest to continue litigation of this case. Rather, the Department has determined that a compromise of these two claims for a total amount of $236,102 would be appropriate. This decision takes into account the documented fact that the WSL has fully corrected the practices which were the basis of the claims of faulty record-keeping, and the estimated litigation risks and costs of proceeding through the appeal process. The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Ronald Petracca, Esq., at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j)(2).

Dated: November 2, 1994.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 94–27665 Filed 11–7–94; 8:45 am]

BILLING CODE 4000–01–P

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 December 8, 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: November 2, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Existing
Title: Request for Collection Assistance Under Federal Insured Student Loan Program ed Form 1249
Frequency: On occasion
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions
Reporting Burden:
Responses: 900
Burden Hours: 297
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The ED Form 1249 is used by lenders in the Federal Insured Student Loan Program (FISLP) to request Skiptracing assistance from the Department of Education (ED) on delinquent student loans when the lender is unable to locate the borrower. The Department will use the information to contact the U.S. Postal Service and relatives of the borrower to request the borrower's current address so that it may resume collection activity on the loan.

[FR Doc. 94–27664 Filed 11–7–94; 8:45 am]
BILLING CODE 4000–01–P

National Advisory Committee on Institutional Quality and Integrity; Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Institutional Quality and Integrity. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: December 5–6, 1994—8:00 a.m. until 5:00 p.m.

ADDRESSES: The Ramada Plaza Hotel, 10 Thomas Circle, NW., Washington, D.C. 20002.

FOR FURTHER INFORMATION CONTACT: Carol F. Sperry, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, 600 Independence Avenue, SW., Room 3122A, ROB 3, Washington, D.C. 20202–7592. Telephone: (202) 260–3636. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Institutional Quality and Integrity is established under Section 1205 of the Higher Education Act (HEA) as amended by Public Law 102–325 (20 U.S.C. 1145). The Committee advises the Secretary of Education with respect to the establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA, the recognition of a specific accrediting agency or association, the preparation and publication of the list of nationally recognized accrediting agencies and associations, the eligibility and certification process for institutions of higher education under Title IV, HEA, and the functions of the Secretary under subpart 1 of part H of Title IV, HEA, relating to State institutional integrity standards. The Committee also develops and recommends to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies, in order to establish eligibility for such institutions on an interim basis for participation in federally funded programs.

Agenda

The meeting on December 5–6, 1994 is open to the public. The Advisory Committee will review petitions and interim reports of accrediting and State approval bodies relative to initial or continued recognition by the Secretary of Education. It also will review a petition by a Federal agency for master's degree-granting authority. In addition, the Committee will hear presentations by representatives of these petitioning agencies and any third parties who have requested to be heard. The following petitions and interim reports are scheduled for review:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Initial Recognition

1. The National Environmental Health Science and Protection Accreditation Council (requested scope of recognition: the accreditation and preaccreditation of baccalaureate programs in environmental health science and protection).

Note: The petition submitted by the American Board for Accreditation in Psychoanalysis for initial recognition was scheduled for review during this meeting, but, at the agency's request, the review of the petition is being deferred until a future meeting of the Advisory Committee (date still to be determined).

Petitions for Renewal of Recognition

1. Accrediting Council for Continuing Education and Training, Accrediting Commission (requested scope of recognition: the accreditation of non-collegiate continuing education institutions and programs).

2. Distance Education and Training Council, Accrediting Commission [formerly the National Home Study Council, Accrediting Commission] (requested scope of recognition: the accreditation of distance education and training institutions offering non-degree and associate, baccalaureate, and master's degree programs primarily through distance learning).

Interim Reports (An interim report is a follow-up report on an agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. American Bar Association, Council of the Section of Legal Education and Admission to the Bar.

2. Accrediting Commission of Career Schools and Colleges of Technology (formerly the National Association of Trade and Technical Schools).

3. American Optometric Association, Council on Optometric Education.

4. American Psychological Association, Committee on Accreditation.

5. American Veterinary Medical Association, Committee on Veterinary Technician Education Activities.

6. American Veterinary Medical Association, Council on Education.

7. Council on Opticianry Association.

8. Middle States Association of Colleges and Schools, Commission on Secondary Schools.

9. National Council for Accreditation of Teacher Education.

10. North Central Association of Colleges and Schools, Commission on Schools.

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Oklahoma State Board of Vocational and Technical Education

2. Oklahoma State Regents of Higher Education
3. Utah State Board of Vocational Education

State Agencies Recognized for the Approval of Nurse Education

Petitions for Renewal of Recognition

1. Maryland State Board of Nursing

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree—Granting Authority

1. Command and General Staff College, Marine Corps University, Quantico, Virginia (for the Master of Military Studies).

A request for comments on all agencies whose petitions, interim reports, and request for degree-granting authority are being reviewed during this meeting was published in the **Federal Register** on September 7, 1994.

Requests for oral presentation before the Advisory Committee should be submitted in writing to Ms. Sperry at the address above by November 22, 1994. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested. Any written materials presenters may wish to give to the Advisory Committee must be submitted to Ms. Sperry by November 30 (one original and 25 copies). Only documents submitted by that date will be considered by the Advisory Committee. Presenters are requested not to distribute written materials at the meeting.

At the conclusion of the meeting, attendees may, at the discretion of the Committee chair, be invited to address the committee briefly on issues pertaining to the functions of the committee, as identified in the section above on Supplementary Information. Participants interested in making such comments should inform Ms. Sperry before or during the meeting.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Streets, SW, room 3036, ROB 3, Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Authority: 5 U.S.C.A. Appendix 2.

Dated: November 2, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–27605 Filed 11–7–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2320–005—NY; Project No. 2330–007—NY]

Niagara Mohawk Power Corp. Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Site Visits

November 2, 1994.

The Federal Energy Regulatory Commission (Commission) has received applications for new license (relicense) from the Niagara Mohawk Power Corporation (NIMO) for the following two existing hydropower projects owned an operated by NIMO on the Raquette River in St. Lawrence County, New York: the Middle Raquette River Project, FERC No. 2320, consisting of the Higley, Colton, Hannawa, and Sugar Island developments; and the Lower Raquette River Project, FERC No. 2330, consisting of the Norwood, East Norfolk, Norfolk, and Raymondville developments.

Upon review of the applications, supplemental filings, and intervener submittals, the Commission staff has concluded that relicensing these two projects would constitute a major federal action significantly affecting the quality of the human environment.

Moreover, given the location and interaction of the two projects, staff will prepare one multiple-project Environmental Impact Statement (EIS) that describes and evaluates the probable impacts of the applicant's proposed and alternative operating procedures, new generating facilities, environmental enhancement measures, and additional river access facilities for the eight developments that comprise the two hydropower projects.

The staff's EIS will consider both site specific and cumulative environmental impacts of relicensing the two projects and will include economic and financial analyses.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the FERC staff and considered in a final EIS.

One element of the EIS process is scoping and site visits. These activities are initiated early to:

- identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EIS;
- identify significant environmental issues related to the operation of the existing projects;
- determine the depth of analysis for issues that will be discussed in the EIS; and
- identify resource issues that are of lessor importance and, consequently, do not require detailed analysis in the EIS.

Site Visits

Site visits to the eight developments that comprise the two projects will be held during the three-day period, November 28, 29, and 30, 1994. The purpose of these visits is for interested persons to observe existing area resources and site conditions, learn the locations of proposed new facilities, and discuss project operational procedures with representatives of NIMO and the Commission.

For details concerning the site visits, please contact Tom Skutnick of NIMO in Syracuse, New York at (315) 428–5564.

Scoping Meetings

The FERC staff will conduct two scoping meetings: the evening meeting will be designed to obtain input from the general public, while the morning meeting will focus on resource agency concerns. These meetings will be held in Potsdam, New York, sometime in March, 1995. The dates and locations of these meetings will be the subject of a future announcement.

For further information, please contact Jim Haimes in Washington, D.C. at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27577 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1578–000]

American Power Exchange, Inc.; Notice of Issuance of Order

November 2, 1994.

On August 22, 1994 and September 9, 1994, American Power Exchange Inc. (APEX) submitted for filing a rate schedule under which APEX will engage in wholesale electric power and energy transactions as a marketer. APEX also requested waiver of various Commission regulations. In particular, APEX requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by APEX.

On October 19, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulations, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by APEX should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, APEX is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some, lawful object within the corporate purposes of the applicant, and compatible with the'public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of APEX's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 18, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27578 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1554–000]

CNG Power Services Corp.; Notice of Issuance of Order

November 2, 1994.

On August 12, 1994 and September 13, 1994, CNG Power Services Corporation (CNGPS) submitted for filing a rate schedule under which CNGPS will engage in wholesale electric power and energy transactions as a marketer. CNGPS also requested waiver of various Commission regulations. In particular, CNGPS requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CNGPS.

On October 25, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CNGPS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CNGPS is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CNGPS's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 25, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27580 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–219–003 and RP94–312–002]

Columbia Gulf Transmission Co.; Notice of Proposed Changes In FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Columbia Gulf Transmission Company (Columbia Gulf) filed a motion to place its suspended rates in this proceeding into effect on November 1, 1994, and tendered for filing the revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, listed in Appendix A to the filing. The revised tariff sheets bear an issue date of October 31, 1994, and a proposed effective date of November 1, 1994.

Columbia Gulf states that the revised filing is being made in accordance with the Commission's order issued May 27, 1994, in these proceedings and Section 154.67(a) of the Commission's Regulations.

Columbia Gulf also filed a motion to place these tariff sheets into effect on November 1, 1994, along with (1) the tariff sheets submitted in the initial filing that have not been revised in this compliance filing, and (2) the tariff sheets submitted in Columbia Gulf's June 10, 1994, compliance filing in this docket. The tariff sheets submitted in the June 10 compliance filing were accepted by the Commission by letter order dated October 4, 1994. All of the tariff sheets being moved into effect are listed in the Appendix to the motion.

Columbia Gulf states that it is revising the throughput mix between firm and interruptible services to reflect actual demand determinants at the end of the test period and requests that the Commission recognize and grant any waivers necessary to establish the threshold for the 90/10 revenue sharing based upon the revised rates and determinants submitted in this filing.

Columbia Gulf also states that it reflected the effect of the new determinant levels on the negative surcharge attributable to an exit fee received from Texas Eastern Transmission Corporation. Columbia Gulf requests waiver of the 30-day notice requirement in order to place the revised rate into effect on November 1, 1994.

Columbia Gulf states that copies of the filing are being served by the company upon each of its firm shippers, interested state commissions and each of the parties set forth on the Official Service List in these proceedings.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27579 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–229–001]

Granite State Gas Transmission, Inc.; Notice of Proposed Change in FERC Gas Tariff

November 2, 1994.

Take notice that on October 28, 1994, Granite State Gas Transmission, Inc., tendered filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below containing changes in rates for effectiveness on November 1, 1994:

Substitute Third Revised Sheet No. 21
Substitute Fourth Revised Sheet No. 22
Substitute Third Revised Sheet No. 23

According to Granite State, the foregoing revised tariff sheets contain its Section 4(e) motion rates in this proceeding. Granite State further states that it filed revised Base Tariff Rates in Docket No. RP94–229–000 on April 29, 1994, and the filing was suspended until November 1, 1994 in an order issued May 26, 1994. (67 FERC 61,233). Granite State further states that the revised tariff sheets also reflect the Annual Charge Adjustments for the 1994 fiscal year, effective October 1, 1994.

Granite State states that its filing has been served on its customers, Bay State Gas Company and Northern Utilities, Inc., the intervenors in Docket No. RP92–229 and on the regulatory commissions of the States of Maine and New Hampshire and the Commonwealth of Massachusetts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 9, 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 proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27581 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–85–000]

Green Mountain Power Corp.; Notice of Filing

November 1, 1994.

Take notice that on October 27, 1994, Green Mountain Power Corporation (GMP) tendered for filing two letter agreements with Louis Dreyfus Electric Power Inc. (Dreyfus) pursuant to which GMP sold a total of 300 MWH of System Power to Dreyfus on September 28 and September 29, 1994. GMP has requested that the Commission waive the notice requirements under the Federal Power Act in order to permit these letter agreements to be made effective as of the date on which service was rendered.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 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 November 16, 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. 94–27582 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–30–000]

Koch Gateway Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective December 1, 1994:

Fourth Revised Sheet No. 20
Fourth Revised Sheet No. 21
Fourth Revised Sheet No. 22
Fourth Revised Sheet No. 24

Koch Gateway states that this filing is submitted pursuant to Section 32.3 of the General Terms and Conditions of Koch Gateway Pipeline Company's FERC Gas Tariff, Fifth Revised Volume No. 1., and as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. Section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission ("Commission") promulgated thereunder.

Koch Gateway states that the revised tariff sheets filed herewith implement the recovery of certain stranded costs by means of surcharges applicable to transportation Rate Schedules FTS, FTS–SCO, NNS, NNS–SCO and ITS. This filing represents a proposed recovery of the buy-out costs for two firm transportation agreements and the costs Koch Gateway incurred during the remaining term of two firm transportation agreements, totaling $5,440,442.

Koch Gateway states that the recovery of costs included in this filing is consistent with the requirements of Order No. 636 and Section 32.3 of the General Terms and Conditions of Koch Gateway's FERC Gas Tariff Fifth Revised Volume No. 1.

Koch Gateway states that the tariff sheets are being mailed to all of Koch Gateway's customers and interested state commissions.

any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 94–27583 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–31–000]

National Fuel Gas Supply Corp.; Notice of General Rate Change

November 2, 1994.

Take notice that on October 31, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and First Revised Volume No. 2 revised sheets listed on the attached Appendix A.

National states that the proposed tariff sheets reflect changes in the level of National's rates to provide an annual increase in revenues from jurisdictional services of approximately $21.0 million when compared to the base rates contained in the Settlement in Docket Nos. RP92–73–000 and RP91–68–000, et al. The proposed rates are based on a test year cost-of-service for the 12 months ended June 30, 1994, as adjusted for known and measurable changes through march 31, 1995.

National states that the revised tariff sheets, which are listed at Appendix A hereto, are proposed to become effective on December 1, 1994.

National also states that its filing provides increased revenues which are required to permit National to adjust its rates to account for plant additions, tax rate changes (including Statement of Financial Accounting Standards No. 109), increased operation and maintenance expenses (including increases in Statement of Financial Accounting Standards No. 106 costs), and other changes.

In addition, National proposes to roll-in the rates for services formerly provided by the Penn-York Energy Corporation. With respect to the rate design issues, national requests the Commission sever the rate design issues for an expedited hearing and decision prior to the end of the suspension period.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before November 9, 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.

APPENDIX A

National Fuel Gas Supply Corporation
Docket No. RP95–31–000

Third Revised Volume No. 1:

Eighth Revised Sheet No. 5
First Revised Sheet No. 5A
Seventh Revised Sheet No. 6
Third Revised Sheet No. 6A
Third Revised Sheet No. 17
First Revised Sheet No. 17–A

First Revised Volume No. 2:

Eleventh Revised Sheet No. 281
Eleventh Revised Sheet No. 321
Eleventh Revised Sheet No. 341
Tenth Revised Sheet No. 538
Eighth Revised Sheet No. 690
Sixth Revised Sheet No. 796
Seventh Revised Sheet No. 857
Fourth Revised Sheet No. 880
Third Revised Sheet No. 881
Fourth Revised Sheet No. 914
Fourth Revised Sheet No. 915
Fourth Revised Sheet No. 935

[FR Doc. 94–27584 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–26–000]

Pacific Gas Transmission Co.; Notice of Change in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Pacific Gas Transmission Company (PGT) tendered for filing Original Sheet No. 6E to its FERC Gas Tariff, First Revised Volume No. 1–A, to adjust the Direct Bill Amount to be refunded to its former sales customer, Pacific Gas and Electric Company, as a result of the closeout of its Account No. 191. PGT requests an effective date of November 1, 1994, and requests waiver of applicable notice requirements.

PGT further states that a copy of its filing is being served on PGT's customers and interested state regulatory agencies.

Any person desiring to be heard or 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 §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27585 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–74–016]

South Georgia Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheet, with a proposed effective date of December 1, 1994:

First Revised Sheet No. 9

South Georgia states that the aforesaid tariff sheet reflects the cancellation of Original Sheet No. 9 which South Georgia states reflected the final disposition of South Georgia's Account No. 191 balance as of July 1, 1993. South Georgia states that since it did make the subject refunds on September 28, 1994, to its former resale customers in accordance with Original Sheet No. 9, this tariff sheet is no longer applicable.

South Georgia states that copies of South Georgia's filing will be served upon South Georgia's former jurisdictional sales customers, interested state commissions and interested parties as well as parties of record in Docket No. RP92–74–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (Section 385.211). All such protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing

are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27586 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–27–000 and RP94–380–003]

Southern Natural Gas Co.; Notice of GSR Revised Tariff Sheets

November 2, 1994.

Take notice that on October 31, 1994, Southern Natural Gas Company (Southern) submitted as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect a decrease in its November 1, 1994, FT and FT–NN GSR surcharge:

Thirteenth Revised Sheet No. 15
First Alternate Thirteenth Revised Sheet No. 15
Thirteenth Revised Sheet No. 17
First Alternate Thirteenth Revised Sheet No. 17
Eleventh Revised Sheet No. 29
Eleventh Revised Sheet No. 30
Eleventh Revised Sheet No. 31

Southern submits alternate tariff sheets to comply with the Commission's September 29 Order requiring the removal of certain price differential costs from the period May 1, 1994 through July 31, 1994. Southern notes that the instant filing is made without prejudice to the position taken by Southern in its request for rehearing or clarification of the above mentioned Order.

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 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 Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27587 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–29–000]

Southern Natural Gas Co.; Notice of Proposed Tariff Changes

November 2, 1994.

Take notice that on October 31, 1994, Southern Natural Gas Company (Southern), tendered for filing a limited rate filing pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717(c) (1988) to recover Account No. 858 contract termination costs incurred as a consequence of restructured pipeline services under Order No. 636, *et seq.*

Section 32.1 of the Tariff authorizes Southern to collect costs attributable to Southern's former sales service. Section 32.2(b) directs Southern to file with the Commission a request to amortize contract termination fees, including carrying charges, over a thirty-six month period. Section 32.3(a) provides that the contract termination costs will be allocated to each customer based on that customer's percentage as shown on Tariff Sheet Nos. 32–34.

Accordingly, Southern states that this filing is being made to request that the Commission allow Southern to amortize a payment of $4,723,145.91 in order to terminate a transportation agreement between Trunkline Gas Company and Southern.

Southern states that copies of this filing are being made available in Southern's office in Birmingham, Alabama.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 9, 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27588 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–106–007]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the revised tariff sheets contained in Appendix A.

Texas Gas states that this filing is made to comply with the provisions identified in the "Order Approving Settlement" issued September 21, 1994. Texas Gas intends to implement the provisions of the settlement in the referenced docket.

Texas Gas further states that copies of the filing have been served upon Texas Gas's jurisdictional customers, all parties on the Commission's official restricted service list in this proceeding, and interested state commissions.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

First Revised Volume No. 1

Tariff Sheets Effective November 1, 1993

Substitute Second Revised Sheet No. 10
Substitute Second Revised Sheet No. 11
Substitute Second Revised Sheet No. 12
Substitute First Revised Sheet No. 12A
Substitute First Revised Sheet No. 13
Substitute First Revised Sheet No. 15
Substitute First Revised Sheet No. 16
Substitute First Revised Sheet No. 17
First Revised Sheet No. 82
First Revised Sheet No. 101
Second Revised Sheet No. 235
First Revised Sheet No. 236
Sheet Nos. 237–244

Tariff Sheets Effective January 1, 1994

Substitute Third Revised Sheet No. 10
Substitute Third Revised Sheet No. 11
Substitute Third Revised Sheet No. 12
Substitute Second Revised Sheet No. 13

Tariff Sheets Effective March 1, 1994

Substitute Fourth Revised Sheet No. 10

Tariff Sheets Effective April 1, 1994

Substitute Fifth Revised Sheet No. 12

Tariff Sheets Effective May 1, 1994

Substitute Sixth Revised Sheet No. 12

Tariff Sheets Effective June 1, 1994

Third Substitute Fifth Revised Sheet No. 10
Substitute Seventh Revised Sheet No. 12

Tariff Sheets Effective September 1, 1994

Substitute Sixth Revised Sheet No. 10
Substitute Eighth Revised Sheet No. 12
Second Revised Sheet No. 19

Tariff Sheets Effective October 1, 1994

Substitute Seventh Revised Sheet No. 10
Substitute Fourth Revised Sheet No. 11
Substitute Ninth Revised Sheet No. 12
First Revised Second Revised Sheet No. 13

Tariff Sheets Effective November 1, 1994

First Revised Seventh Revised Sheet No. 10
First Revised Fourth Revised Sheet No. 11
Original Sheet No. 11.1
First Revised Ninth Revised Sheet No. 12
First Revised Fourth Revised Sheet No. 18
Fifth Revised Sheet No. 229
First Revised First Revised Sheet No. 230

Original Volume No. 2

Tariff Sheets Effective November 1, 1993

Third Substitute Fifteenth Revised Sheet No. 82
Third Substitute Sixteenth Revised Sheet No. 547
Third Substitute Eighteenth Revised Sheet No. 982
Third Substitute Sixteenth Revised Sheet No. 1005
Third Substitute Tenth Revised Sheet No. 1085

[FR Doc. 94–27589 Filed 11–7–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–15–000]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of December 1, 1994:

Second Revised Seventh Revised Sheet No. 10
Second Revised Fourth Revised Sheet No. 11
First Revised Sheet No. 11.1
Second Revised Ninth Revised Sheet No. 12

Texas Gas States that the revised tariff sheets are being filed pursuant to § 33.3 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to recover ninety percent (90%) of its Gas Supply Realignment costs from its firm transportation customers and ten percent (10%) of its Gas Supply Realignment Costs from its IT customers. The GSR costs, including applicable interest, proposed to be recovered by Texas Gas's fourth GSR recovery filing total $10,708,882.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers, those appearing on the applicable service lists, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27590 Filed 11–7–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM95–3–30–000]

Trunkline Gas Co.; Notice of Filing in Compliance With FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Trunkline Gas Company (Trunkline) tendered for filing the material required by Section 24 (Interruptible Revenue Credit Surcharge Adjustment) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that this filing contains the required computations and workpapers in accordance with Section 24 and that since the said computations of the Interruptible Revenue Credit Amount applicable to Rate Schedules FT, EFT, QNT and SST is less than the Base Interruptible Costs, no Interruptible Revenue Credit Surcharge Adjustment is required.

Trunkline requests that the Commission grant such waivers as may be necessary for the acceptance of this filing as being in compliance with Section 24 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline further states that copies of the filing are being served on all customers subject to Section 24 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1, and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before November 9, 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. 94–27591 Filed 11–7–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–28–000]

Williams Natural Gas Co.; Notice of Proposed Changes In FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 30, 1994:

Second Revised Sheet Nos. 227 and 228
First Revised Sheet No. 229
Original Sheet Nos. 229A–229C
First Revised Sheet No. 230

WNG states that this filing is being made to amend Article 9 of the General Terms and Conditions of its FERC Gas Tariff to provide for daily balancing penalties.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be

filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27592 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

New Filing Deadline in Special Refund Proceeding Involving Crude Oil Overcharge Refunds

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of reopening the period for filing Applications for Refund in the Crude Oil Overcharge Special Refund Proceeding [RF272 Case Nos.]

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has reopened the period for filing a timely Application for Refund from the escrow account established to distribute crude oil overcharge refunds.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Virginia Lipton, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 586–2390 (Wieker) (202) 586–2400 (Lipton).

SUPPLEMENTARY INFORMATION: On May 3, 1993, the Department of Energy issued a Notice which established June 30, 1994, as the final deadline for filing an Application for Refund from all crude oil funds. 58 FR 26318 (May 3, 1993). Although the DOE provided more than one year's notice of that closing date, the DOE did not request public comment on the selection of the closing date itself. The DOE has decided to reopen the period for filing crude oil overcharge refund claims and to take comments on the issue of the appropriate closing date. Accordingly, the DOE proposes a new closing date of June 3, 1996, for the crude oil overcharge refund proceeding. We solicit comments on this proposed closing date. Comments should be provided by April 3, 1995, to the Office of Hearings and Appeals at the address set out above.

Dated: November 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–27661 Filed 11–7–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals,

Final Filing Deadline in Special Refund Proceeding No. LFX–0002 Involving Good Hope Refineries

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Final Deadline for Filing Applications for Refund in Special Refund Proceeding No. LFX–0002, Good Hope Refineries.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has set the final deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and Good Hope Refineries, Special Refund Proceeding No. LFX–0002. The previous deadline was July 31, 1992. The new deadline is January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585 (202) 586–2094.

SUPPLEMENTARY INFORMATION: The Office of Hearings and Appeals of the Department of Energy is hereby setting a final deadline for the filing of Applications for Refund in the second Good Hope Refineries (Good Hope) refund proceeding. The first Good Hope refund proceeding, which distributed monies in the oil overcharge escrow account established in accordance with the terms of a consent order entered into by the DOE and Good Hope, is closed. Unclaimed funds were remitted to the States for indirect restitution under the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. § 4501 *et seq.* See 51 FR 43964, 43966 (December 5, 1986). On June 28, 1991, we issued a Decision and Order setting forth final refund procedures to distribute additional Good Hope funds. See Good Hope Refineries, 21 DOE ¶ 85,309 (1991), 56 FR 49475 (September 30, 1991). That Decision established June 30, 1992 as the filing deadline for purchasers of Good Hope refined products to submit refund applications.

Since June 30, 1992, we have routinely granted extensions of time to Good Hope customers who were unaware of the proceeding or were in the process of gathering information to support their refund claims. We have now received 22 refund applications. Given that the proceeding has been open for three years, we have concluded that eligible applicants have been provided with more than ample time to file. We will therefore not accept applications that are postmarked after January 31, 1995. All Applications for Refund from the Good Hope Refineries Consent Order Fund postmarked after the final filing date of January 31, 1995, will be summarily dismissed. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: November 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–27662 Filed 11–7–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed; Week of August 12 Through August 19, 1994

During the Week of August 12 through August 19, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: November 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Week of August 12 through August 19, 1994

Date	Name and location of applicant	Case No.	Type of submission
8/15/94	Major Oils Rochester, NY	RR321–165	Request for Modification/Rescission in the Texaco refund proceeding. If granted: The July 22, 1994 Decision and Order R321–4344 issued to Major Oils regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.
8/16/94	Sound Oil Company Seattle, WA.	LEE–0152	Exception to the Reporting Requirements. If granted: Sound Oil Company would not be required to file Form EIA–782B "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
8/17/94	Martin Petroleum Corporation Fort Lauderdale, FL.	LEE–0153	Exception to the Reporting Requirements. If granted: Martin Petroleum Corporation would not be required to file form EIA–782 "Resellers'/Retailers' Monthly Petroleum Product Sales Report.
8/18/94	Consultec Bowie, MD	LFA–0412	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the Office of Hearings and Appeals would be rescinded and Consultec would receive access to certain DOE information.
8/18/94	Martha L. Powers New York, NY	LFA–0411	Appeal of an Information Request Denial. If granted: The July 21, 1994 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and Martha L. Powers would receive access to records that show Mr. George A. Egish's photographic-filming activities at a nuclear test site in order to enable Mrs. Gertrude Egish to file a Radiation Exposure Act claim. Martha L. Powers would receive a waiver of all fees incurred in the processing of the information requested above.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/12/94 thru 8/19/94	Texaco Refund Applications	RF321–21023 thru RF321–21025.
8/12/94 thru 8/19/94	Crude Oil Refund Applications	RC272–241 thru RC272–249.
8/12/94 thru 8/19/94	Crude Oil Refund Applications	FR272–99146 thru RF272–99147.

[FR Doc. 94–27663 Filed 11–7–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5103–7; ECAO–RTP–0843]

Workshop for External Peer Review of Working Paper on Methods for Health Assessment for Acute Inhalation Exposure to Chemicals

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: An external review workshop will be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment. Selected peer reviewers will discuss their comments on a preliminary working paper, "Methods for Exposure-Response Analysis and Health Assessment for Acute Inhalation Exposure to Chemicals". The results of the meeting will be used to develop a draft document describing the methodology for subsequent public comment and peer review.

DATES: The workshop will be held on Tuesday and Wednesday, November 15 and 16, 1994, at the North Raleigh Hilton Hotel at 3415 Old Wake Forest Road, Raleigh, NC. Registration begins at 8:00 A.M. on November 15; the meeting times are 10:00 a.m. to 5:00 p.m. On Wednesday, the meeting times are 9:00 a.m. to 4:00 p.m. The workshop is open to the public, and there will be time set aside for brief oral statements.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel J. Guth, project officer, U.S. Environmental Protection Agency, ECAO, MD–52, Research Triangle Park, NC 27711, telephone 919–541–4930.

SUPPLEMENTARY INFORMATION: In the development of this working paper, current methods for quantitative exposure-response analysis for health effects of acute inhalation exposure are reviewed and qualitative aspects of data evaluation are discussed. A method is proposed for quantitative exposure-response analysis using (1) a categorical regression model and (2) the benchmark concentration approach. Reviewers were selected on the basis of their recognized expertise and contributions to the scientific literature on risk assessment and for their specific expertise in the toxicological disciplines used to

develop the working paper. The working paper will be available to the public at the time of the workshop, but public comments on the whole of the method will only be sought on a subsequent external review draft. The availability of the external review draft will be announced in the **Federal Register** at a later time.

Dated: November 1, 1994.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 94–27650 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5103–6]

Workshop for External Peer Review of Draft Document on Ambient Sources and Noncancer Respiratory Effects of Inhaled Silica

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: An external peer review workshop will be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment. Expert peer reviewers, recognized for their contributing to the scientific literature on silica, will discuss a review draft of the document entitled "Ambient Sources and Noncancer Respiratory Effects of Inhaled Silica." The results of the meeting will be used in the preparation of the final document.

DATES: The workshop will be held on Monday, November 14, 1994, from 9:00 a.m. to 5:00 p.m. in Classroom 2 at EPA's Environmental Research Center at the intersection of Alexander Drive and Highway 54, in Research Triangle Park, NC. The workshop is open to the public.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey S. Gift, project officer, U.S. Environmental Protection Agency, ECAO, MD–52, Research Triangle Park, NC 27711 (telephone 919–541–4828; FAX 919–541–0245).

SUPPLEMENTARY INFORMATION: In the development of this assessment document, the scientific literature relating to ambient levels and noncancer respiratory effects of silica has been reviewed, and key studies evaluated. The main objective of the document is to assess the available data on effect levels and concentration-response relationships for inhaled silica and to place them in perspective with observed or estimated environmental silica levels. This document does not review the potential carcinogenicity of silica, nor does it extensively address effects of particulate matter exposures that are not silica-specific. The draft document will be made available to the public at the time of the workshop. Members of the public will have an opportunity at the workshop to make brief, oral statements. Interested parties also are invited to assist the EPA in developing and refining the scientific information base for silica by submitting new information on the topics covered. To be considered for inclusion in the review process, submitted information should be published or accepted for publication in a peer-reviewed, scientific journal. New information should be submitted through Dr. Jeffrey Gift at the address indicated above.

Dated: November 11, 1994.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 94–27651 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5103–2]

California State Nonroad Engine and Equipment Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity for Public Hearing and Public Comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations for exhaust emission standards and test procedures for utility and lawn and garden equipment engines (utility engines) for 1995 and subsequent calendar years. CARB has requested that EPA authorize CARB to enforce regulations pursuant to section 209(e) of the Clean Air Act (Act), as amended, 42 U.S.C. 7543. This notice announces that EPA has tentatively scheduled a public hearing to consider CARB's request and to hear comments from interested parties regarding CARB's request for EPA's authorization and CARB's determination that its regulations, as noted above, comply with the criteria set forth in section 209(e). In addition, EPA is requesting that interested parties submit written comments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by November 28, 1994. If no party notifies EPA that it wishes to testify on the nonroad emission amendments, then no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA has tentatively scheduled a public hearing for December 6, 1994, beginning at 9:00 a.m., if any party notifies EPA by November 28, 1994 that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's requests by January 11, 1995 (this extended written comment period allows 30 days plus an extra week for the holiday period). After November 28, 1994, any person who plans to attend the hearing may call David Dickinson of EPA's Manufacturers Operations Division at (202) 233–9256 to determine if a hearing will be held.

ADDRESSES: If a request is received, EPA will hold the public hearing announced in this notice at the Channel Inn (Captain's Room), 650 Water Street, SW., Washington, DC 20024. Parties wishing to present oral testimony at the public hearing should notify in writing, and if possible, submit ten (10) copies of the planned testimony to: Charles N. Freed, Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In addition, any written comments regarding the waiver request, should be sent, in duplicate, to Charles N. Freed at the same address to the attention of Docket A–91–01. Copies of material relevant to the waiver request (Docket A–91–01) will be available for public inspection during normal working hours of 8 a.m. to 4 p.m. Monday through Friday, including all non-government holidays, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–7548. FAX Number: (202) 260–4000.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 233–9256.

SUPPLEMENTARY INFORMATION:

I. Background

Section 209(e)(1) of the Act as amended, 42 U.S.C. 7543(e)(1), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles

and which are smaller than 175 horsepower. (B) New locomotives or new engines used in locomotives."

For those new pieces of equipment or new vehicles other than those a State is not permanently preempted from regulating under section 209(e)(1), the State of California may regulate such new equipment or new vehicles provided California complies with Section 209(e)(2). Section 209(e)(2) provides in part that the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines "[i]f California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—(i) the determination of California is arbitrary and capricious, (ii) California does not need such California standards to meet compelling and extraordinary conditions, or (iii) California standards and accompanying enforcement procedures are not consistent with this section."

EPA has issued a final regulation titled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" (section 209(e) rule) that sets forth several definitions, as explained below, and the authorization criteria EPA must consider before granting California an authorization to enforce any of its nonroad engine standards.[1] As described in the section 209(e) rule, in order to be deemed "consistent with this section", California standards and enforcement procedures must be consistent with section 209. In order to be consistent with section 209 California standards and enforcement procedures must reflect the requirements of sections 209(a), 209(e)(1), and 209(b). Section 209(a) prohibits states from adopting or enforcing emission standards for new motor vehicles or new motor vehicle engines.[2] Section 209(e)(1) identifies the categories preempted from state regulation. As stated above, the preempted categories are (a) new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower, and (b) new locomotives or new engines used in locomotives. The section 209(e) rule defines construction equipment or vehicle to mean "any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites. The section 209(e) rule defines farm equipment or vehicle to mean "any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm. The section 209(e) rule defines "primarily used" to mean "used 51 percent or more." Therefore, California's proposed emission regulations would be considered inconsistent with section 209 if they applied to these permanently preempted categories. Additionally, the section 209(e) rule requires EPA to review nonroad authorization requests under the same "consistency" criterion that it reviews motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. California's nonroad standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those standards, giving appropriate consideration to the cost of compliance within that time frame. Additionally, California's nonroad accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the State and Federal test requirements with one test vehicle or engine.

Once California has been granted an authorization, under section 209(e)(2), for its standards and accompanying enforcement procedures for a category or categories of equipment, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject category or categories of equipment without the necessity of receiving further EPA authorization.

By letter dated December 27, 1990, CARB submitted to EPA a request that EPA authorize California to adopt regulations for standards and test procedures for 1994 and subsequent calendar year utility and lawn and garden engines and vehicles. On September 6, 1991 EPA issued a "Proposed Decision of the Administrator; Opportunity for Public Hearing."[3] By today's action EPA is offering an additional opportunity for public hearing and written comment on CARB's utility engine authorization request. By a decision dated December 18, 1992, CARB changed the affected model year to 1995. By letter dated September 9, 1994, CARB submitted a revised authorization request for waiver of federal preemption describing, among other things, which categories of equipment would be subject to its regulations. These regulations which apply to all gasoline, diesel, and other fueled nonroad equipment engines 25 horsepower and under, with the exceptions noted in CARB's request:

a. Establish exhaust emission standards for engines produced between December 31, 1994 and the end of the 1998 model year, measured in grams per brake-horsepower-hour (g/bhp-hr), based on total engine displacement and whether the equipment is handheld or non-handheld.

b. Establish a second tier of exhaust emission standards for 1999 and subsequent model year utility engines.

c. Require certification of engines including compliance test procedures and assembly-line quality audit test procedures.

d. Require that commencing with the year 1999 replacement engines for equipment built prior to 1995 comply with the 1995 model emission regulations.

e. Establish a labeling requirement.

f. Require manufacturers to provide a two year emissions warranty.

Subsequent to CARB's adoption of its new utility and lawn and garden standards and test procedures, EPA proposed standards and test procedures for similar horsepower-sized equipment on May 16, 1994.[4] EPA expects this proposed rule to become final in May 1995. Under the proposed rule noted above EPA's standards and test procedures were proposed to commence on August 1, 1996. Because EPA's standards and test procedures are not yet final, EPA does not expect CARB's

[1] See 59 FR 36969, July 20, 1994 (to be codified at 40 C.F.R. part 85, subpart Q, §§ 85.1601-85.1606). This final rule titled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" was proposed at 56 FR 45866, Sept. 6, 1991, along with a "Proposed Decision of the Administrator; Opportunity for Public Hearing" at 56 FR 45873, Sept. 6, 1991.

[2] EPA believes CARB's authorization request for utility and lawn and garden equipment engines below 25 horsepower does not raise an issue with regard to whether such engines are motor vehicles. EPA anticipates that in future CARB authorization requests involving larger horsepower engines EPA will utilize both its definitions of motor vehicles and nonroad engines to resolve this issue.

[3] 56 FR 45873, Sept. 6, 1991. A hearing was held on September 20, 1991 for both CARB's utility engine authorization request and EPA's proposed Section 209(e) regulation. No final EPA decision was made regarding CARB's utility engine authorization request.

[4] "Control of Air Pollution: Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts" at 59 FR 25399, May 16, 1994.

utility and lawn and garden standards and test procedures to be compared to EPA's proposed standards and test procedures for purposes of this authorization request. However, EPA invites comment on this reasoning and comment on any comparison between CARB's utility engine regulation and EPA's proposed regulation regarding similar horsepower-sized equipment and how it may affect today's authorization consideration.

California states in its September 9, 1994 letter that it has determined that its standards for utility and lawn and garden equipment engines are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards. Further, California, referencing its December 27, 1990 letter, states that it needs separate standards to meet compelling and extraordinary conditions. Finally, California states that its standards and test procedures are consistent with section 209 of the Act. California's request will be considered according to the criteria for an authorization request as set forth in the section 209(e) regulation.[5] Any party wishing to present testimony at the hearing or by written comment should address, as explained in the section 209(e) rule, the following issues:

(1) Whether California's determination that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with (i) section 209(a), which prohibits states from adopting or enforcing emission standards for new motor vehicles or engines, (ii) section 209(e)(1), which identifies the categories preempted from state regulation, and (iii) section 202(a) of the Act.

II. Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information regarding the issues as noted above and further explained in the section 209(e) rule. Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than November 28, 1994. In addition, the party should submit 50 copies, if possible, of the proposed statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until January 11, 1994.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information." To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. If a person making comments wants EPA to base its final decision in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to person making comments.

Dated: November 1, 1994.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–27648 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–P

[5] "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" at 59 FR 36969, July 20, 1994 (to be codified at 40 C.F.R. part 85, subpart Q, §§ 85.1601–85.1606).

[FRL–5103–3]

Proposed Settlement; Source Category List Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of *Natural Resources Defense Council, Inc.*, v. *U.S. Environmental Protection Agency*, No.92–1415 (D.C. Cir.).

The case involves a challenge to the Initial List of Categories of Sources under section 112(c)(1) of the Clean Air Act Amendments of 1990 published by EPA in the **Federal Register** on July 16, 1992 at 57 FR 13,576 (1992). The proposed settlement relates to the exclusion of utility boilers from the Initial List.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Patricia A. Embrey at the above address and must be submitted on or before December 8, 1994.

Dated: November 1, 1994.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–27649 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1042–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1042–DR), dated

October 19, 1994, and related determinations.

EFFECTIVE DATE: October 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 10472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated October 19, 1994, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 19, 1994:

The counties of Bryan, Chatham, Decatur, Effingham, Grady, and Tift for Public Assistance (already designated for Individual Assistance.)

The counties of Brooks, Bulloch, Clinch, Colquitt, Thomas, Worth for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–27636 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–02–P–M

[FEMA–1041–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1041–DR), dated October 18, 1994, and related determinations.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas dated October 18, 1994, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 1994:

The counties of Fayette, Grimes, Harris, Jackson, Lavaca, Liberty, Matagorda, Montgomery, San Augustine, San Jacinto, Trinity, Walker, Waller, and Wharton for Public Assistance (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–27637 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–02–P–M

[FEMA–1041–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1041–DR), dated October 18, 1994, and related determinations.

EFFECTIVE DATE: October 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas dated October 18, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 1994.

Lavaca and DeWitt Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–27638 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–02–P–M

FEDERAL RESERVE SYSTEM

Community Bancshares, 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 (12U.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 December 2, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Community Bancshares, Inc., Katy, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bancshares of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Community Bank, Katy, Texas. In connection with this application Community Banchares of Delaware, Inc., Wilmington, Delaware has applied to become a bank holding company.

2. Roxton Corporation Employees' Stock Ownership Plan, Whitesboro, Texas; to become a bank holding company by acquiring 27.42 percent of the voting shares of The Roxton Corporation, Whitesboro, Texas, and thereby indirectly acquire The First State Bank, Roxton, Texas.

Board of Governors of the Federal Reserve System, November 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27617; Filed 11–7–94; 8:45 am]

BILLING CODE 6210–01–F

First Grayson Bancshares, Inc., Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for

processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. First Grayson Bancshares, Inc., Employee Stock Ownership Plan, Whitesboro, Texas; to acquire an additional 11.64 percent, for a total of 15.82 percent, of the voting shares of First Grayson Bancshares, Inc., Whitesboro, Texas, and thereby indirectly acquire Security Bank of Whitesboro, Whitesboro, Texas.

2. Metroplex North Bancshares, Inc., Employee Stock Ownership Plan, Whitesboro, Texas, to acquire and additional 3.61 percent, for a total of 17.54 percent, of the voting shares of Metroplex North Bancshares, Inc., Whitesboro, Texas, and thereby indirectly acquire The First Bank of Cleste, Cleste, Texas.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F. Preston Farmer, London, Kentucky; to retain 12.34 percent of the voting shares of First National London Bankshares Corp., London, Kentucky, and indirectly acquire First National Bank and Trust Company, London, Kentucky.

Board of Governors of the Federal Reserve System, November 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27613; Filed 11–7–94; 8:45 am]

BILLING CODE 6210–01–F

Saban, S.A., Marina Bay, Gibraltar, RNYC Holdings Limited, Marina Bay, Gibraltar, and Republic New York Corporation, New York, New York; Application to Engage in Nonbanking Activities

Saban, S.A., Marina Bay, Gibraltar, RNYC Holdings Limited, Marina Bay, Gibralter, and Republic New York Corporation, New York, New York, (together, Applicant), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through a wholly owned subsidiary, Republic New York Securities Corporation, New York, New York (Company), a futures commission merchant (FCM) registered under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), in executing and clearing, clearing without executing, executing without clearing, purchasing and selling through the use of omnibus trading accounts, and providing investment advisory services with regard to futures and options on futures on financial and nonfinancial commodities that previously have been approved by the Board and to engage in FCM activities only through omnibus trading accounts with regard to the following contracts that have not previously been approved by the Board: Copper Grade A Futures and Options on Copper Grade A Futures on the London Metal Exchange Limited. Applicant proposes to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (January 5, 1984).

Applicant maintains that the proposed activities are closely related to banking or managing or controlling banks. Except as noted below, the Board previously has approved acting as a futures commission merchant in executing and clearing the proposed commodity contracts. *See Bank of Montreal*, 79 Federal Reserve Bulletin 1049 (1993); *J.P. Morgan & Company Incorporated*, 80 Federal Reserve Bulletin 151 (1994) (*Morgan*); SR Letter No. 93027 (FIS)(May 21, 1993). The Board also has approved providing a combination of advisory services regarding nonfinancial commodity derivatives and acting as an FCM in the execution and clearance of these derivatives. *See Morgan*; *Caisse Nationale de Credit Agricole S.A.*, 80 Federal Reserve Bulletin 552 (1994); *Societe Generale*, 80 Federal Reserve Bulletin 649 (1994).

The Board has not approved the trading of any contracts on the London Metals Exchange Limited (LME). Applicant maintains that providing FCM services with regard to these contracts is closely related to banking because the Board has approved similar copper contracts on exchanges that operate in a manner similar to the LME.

Applicant proposes to conduct the proposed activities in a manner consistent with what the Board approved in the *Societe Generale* order in that Company's customers would include managed commodity funds (or commodity pools), but neither Applicant nor Company would sponsor, own, or otherwise be affiliated with a commodity fund (or commodity pool) in the United States without Federal Reserve approval.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues

presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 22, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27619; Filed 11–7–4; 8:45 am]

BILLING CODE 6210–01–F

Shawmut National Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 22, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Shawmut National Corporation, Hartford, Connecticut; to acquire Northeast Federal Corp., Hartford, Connecticut, and indirectly acquire Northeast Savings, F.A., Hartford, Connecticut, and thereby engage in owning, controlling and operating a savings association that engages only in deposit-taking activities and lending and other activities, pursuant to subpart C of § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Connecticut, Massachusetts, and upstate New York.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Southern National Corporation, Lumberton, North Carolina; to acquire BB&T Financial Corporation, Wilson, North Carolina, and thereby engage in community development activities, in the form of equity investments in rental real estate projects which will qualify for the low-income housing credit under section 42 of the Internal Revenue Code of 1986, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Security Richland Bancorporation, Miles City, Montana; to engage in general insurance activities through the Hansen-Lawrence Agency, Inc., Worden, Montana, pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y. Applicant intends to conduct the following insurance activities: commercial property and casualty insurance, surety bonds, crop and hail insurance, workmen's compensation, individual property and casualty, federal crop insurance, and life, accident, and health insurance.

Board of Governors of the Federal Reserve System, November 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27616; Filed 11–7–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/17/94 AND 10/28/94

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cyrus Tang, Usinor Sacilor, Interstate Steel Co	94–2189	10/17/94
Yarmouth Capital Partners, L.P., The Gates Corporation, Cheyenne Mountain Conference Resort, Ltd	95–0012	10/17/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/17/94 AND 10/28/94—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Apollo Real Estate Investment Fund, L.P., Clark Holdings, Sugar House Development Partnership	95–0033	10/17/94
Genzyme Corporation, BioSurface Technology, Inc., Bio Surface Technology, Inc	94–2238	10/18/94
Cincinnati Gas & Electric Company (The), PSI Resources, Inc., PSI Resources, Inc	94–2262	10/18/94
PSI Resources, Inc., Cincinnati Gas & Electric Company (The), Cincinnati Gas & Electric Company (The)	94–2263	10/18/94
General Motors Corporation, NATIONAL Auto/Truckstops Holdings Corporation, TA Holdings Corporation	94–2268	10/18/94
Walker Drug Company, E. S. Albers, Jr., Albers, Inc	94–2293	10/18/94
Wellcome plc, Lynx Therapeutics, Inc., Lynx Therapeutics, Inc	95–0003	10/18/94
ARA Group, Inc. (The, Harry M. Stevens Holding Corp., Harry M. Stevens Holding Corp	95–0005	10/18/94
James E. Ferrell, Bell Atlantic Corporation, Vision Energy Resources, Inc	95–0008	10/18/94
Mosvold Shipping AS Kemper Corporation, Galaxy Offshore, Inc	95–0014	10/18/94
HSBC Holdings, plc, Robert E. Roth, R & H Development Corp	95–0015	10/18/94
Bahrain International Bank (E.C.), Grand Metropolitan Public Limited Company, Burger King Corporation	95–0017	10/18/94
Peter Munk, Chevron Corporation, Chevron U.S.A. Inc. and Chevron Pipe Line Company	95–0020	10/18/94
Atlantic Foundation (The), United Meridian Corporation, United Meridian Corporation	95–0021	10/18/94
Science Applications International Corporation, Ideas, Inc., Ideas, Inc	95–0026	10/18/94
Jannock Limited, Bird Corporation, Bird Incorporated	95–0057	10/18/94
HSBC Holdings plc, David J. Hunter, Jr., R & H Development Corp	95–0070	10/18/94
Plains Petroleum Company, Anadarko Petroleum Corporation, Anadarko Petroleum Corporation	95–0047	10/19/94
Centre Capital Investors L.P., Almac's Inc., Almac's	95–0053	10/19/94
Mr. Jean Coutu, Revco D.S., Inc., Hook-SupeRx, Inc	94–2251	10/20/94
California Energy Company, Inc., Magma Power Company, Magma Power Company	95–0035	10/20/94
Danaher Corporation, Samara Finance, S.A., DCI Consolidated Industries, Inc	95–0049	10/20/94
AT&T Corp., Sterling Cellular Holdings Limited Parternship, Arkansas Cellular Limited Partnership	95–0006	10/21/94
Jefferson Smurfit Group plc, Jefferson Smurfit Corporation, Jefferson Smurfit Corporation	95–0016	10/21/94
Martin J. Wygod, Merck & Co., Inc., Synetic, Inc	95–0022	10/21/94
Insignia Financial Group, Inc., American Express Company, Allegiance Realty Group, Inc	95–0025	10/21/94
Babbage's, Inc., Software Etc. Stores, Inc., Software Etc. Stores, Inc	95–0027	10/21/94
Software Etc. Stores, Inc., Babbage's Inc., Babbage's Inc.	95–0028	10/21/94
Leonard Riggio, SES/B Holdings, Inc., SES/B Holdings, Inc	95–0042	10/21/94
Vendex International N.V. (a Dutch company), SES/B Holdings, Inc., SES/B Holdings, Inc	95–0043	10/21/94
Chubb Corporation (The), Alexander & Alexander Services Inc., Alexander & Alexander Services Inc	95–0050	10/21/94
BMC West Corporation, Jack B. Curan and Irene W. Curran, husband and wife, Henry Bacon Building Materials, Inc	95–0058	10/21/94
Century Communications Corp., RSA Cellular Company, RSA Cellular Company	95–0040	10/24/94
RailTex Inc., Canadian National Railway Company, Central Vermont Railway Inc	95–0060	10/24/94
Coventry Corporation, Southern Health Management Corporation, Southern Health Management Corporation	95–0061	10/24/94
Casino SCA, Edward I. Sternlieb, Henry Lee Company	95–0064	10/24/94
Philips Electronics N. V., Island Settlement Trust (a Bahamian trust), Island Trading Company, Inc.	95–0071	10/24/94
AmeriHealth, Inc., Champion Healthcare Corporation, Champion Healthcare Corporation	95–0085	10/24/94
Lincolnshire Equity Fund, L.P., Scott Chinery, L & S Research Corporation	95–0088	10/24/94
Peter Kiewit Sons', Inc., Bark Lee Yee and Stella C. Yee, Twin County Trans Video, Inc	95–0096	10/24/94
Head Insurance Investors L.P., Integon Life Partners L.P., Marketing One Financial Corporation	95–0104	10/24/94
J.W. Family Trusts Nos. 1–20, Integon Life Partners L.P., Rubicon Asset Group Corporation	95–0105	10/24/94
EWI, Inc., AB Volvo, Volvo GM Heavy Truck Corporation	95–0106	10/24/94
WSFS Financial Corporation, Providential Corporation, Providential Corporation	95–0112	10/24/95
Iowa Health System, St. Luke's Methodist Hospital, St. Luke's Methodist Hospital	95–0052	10/25/94
Gannett Co., Inc., Arkansas Television Company, Arkansas Television Company	95–0052	10/25/95
Korea Mobile Telecommunications Corporation, Iridum, Inc., Iridium, Inc	95–0056	10/25/94
American Financial Corporation, Guaranty Reassurance Corporation, Western Pacific Life Insurance Company	95–0068	10/25/94
Ronald O. Perelman, Mark Goldman, M. G. Industries Inc., Eastpak Inc	95–0077	10/25/94
Jeffrey H. Smulyan, Gordon Gray Irrevocable Living Trust, Summit Broadcasting Holding Company	95–0079	10/25/94
Triarc Companies, Inc., CS Holding, Long John Silver's Restaurants, Inc	94–2250	10/26/94
Sisters of the Sorrowful Mother Generalate, Inc., Wheaton Franciscan Services, Inc., WFSI Fox Valley, Inc	94–2271	10/26/94
Wheaton Franciscan Services, Inc. Sisters of the Sorrowful Mother Generalate, Inc. Mercy Medical Center of Oshkosh, Inc	94–2272	10/26/94
Berjaya Group Berhad Charles and Mary Robins Dunham-Bush Inc	94–2295	10/26/94
Warburg Pincus Investors, L.P., Grubb & Ellis Company, Grubb & Ellis Company	95–0024	10/26/94
Southern National Corporation, Prime Rate Premium Finance Corporation, Inc., Prime Rate Premium Finance Corporation, Inc	95–0030	10/26/94
E–Z Serve Corporation, The Kroger Co, Time Saver Stores, Inc.	95–0089	10/26/94
Host Marriott Corporation, MRI Business Properties Fund, Ltd., Dallas Quorum Marriott Hotel	95–0102	10/26/94
Warburg Pincus Investors, L.P., PS Stores Acquisition Corp. (Joint Venture), PS Stores Acquisition Corp. (Joint Venture)	95–0111	10/26/94
Alexander M. Vik, Armco Inc., Northwestern National Holding Company, Inc	94–2256	10/26/97
Eaton Corporation, Walter S. McPhail, Lectron Products, Inc	94–2301	10/27/94
MLGA Fund II, L.P., Stuart Entertainment, Inc., Stuart Entertainment, Inc	95–0048	10/27/94
Longview Fibre Company, John Hancock Mutual Life Insurance Company, John Hancock Mutual Life Insurance Company	95–0081	10/27/94
Hornbeck Offshore Services, Inc., Oil & Gas Rental Services, Inc., Oil & Gas Rental Services, Inc	95–0113	10/27/94
Allied Signal, Inc., Textron Inc., Avco Corporation	94–1440	10/28/94
Commercial Metals Company, Owen Steel Company, Inc., Owen Steel Company, Inc	94–2297	10/28/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/17/94 AND 10/28/94—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Owen Steel Company, Inc., South Carolina Steel Corporation, South Carolina Steel Corporation	94–2304	10/28/94
Sanyo Electric Co., Ltd., Newco, Newco	95–0032	10/28/94
Morgan Stanley Real Estate Fund, L.P. (The), Chase Manhattan Corporation (The), Chase Manhattan Bank, N.A. (The)	95–0128	10/28/94
USX Corporation, Unocal Corporation, Union Oil Company of California	95–0128	10/28/94
Unocal Corporation, USX Corporation, Marathon Oil Company	95–0129	10/28/94
AXA, The Equitable Companies Incorporated, The Equitable Companies Incorporated	95–0130	10/28/94
Frederick A. Landman, PanAmSat Corporation, PanAmSat Corporation	95–0133	10/28/94
Allen B. Shaw, Sumner M. Redstone, Viacom Broadcasting West Inc.	95–0134	10/28/94
Emilio Azcarraga Milmo, PanAmSat Corporation, PanAmSat Corporation	95–0139	10/28/94
Ralph J. Roberts, c/o Comcast Corporation, Joint Venture Corporation, Joint Venture Corporation	95–0153	10/28/94
R&B, Inc., Sun Distributors, L.P., Dorman Products Division	95–0155	10/28/94
Genstar Capital Corporation, Alcan Aluminum Limited Alcan Aluminum Corporation	95–0157	10/28/94
AT&T Corp. ("AT&T"), AT&T Monroe Cellular Limited Partnership ("Monroe")	95–0167	10/28/94
Corange Limited (a Bermuda-company), Gensia, Inc., Gensia, Inc	95–0169	10/28/94
Cellular Information Systems, Inc., Century Telephone Enterprises, Inc., Century Cellunet of Minnesota RSA #6, Inc.	95–0172	10/28/94
DynCorp, Cincinnati Bell Inc., CBIS Federal, Inc	95–0182	10/28/94
Legg Mason, Inc., Dean LeBaron, Batterymarch Financial Management	95–0191	10/28/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580 (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–27567 Filed 11–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3536]

Adobe Systems Incorporated, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits the consummation of the acquisition of Aldus Corporation by Adobe Systems Incorporated and requires, among other things, the two software firms to divest Aldus Corporation's FreeHand professional-illustration computer software and name to Altsys Corporation within six months. In addition, for ten years, the order requires the respondents to obtain Commission approval before acquiring any stock or other interest in any firm engaged in the development or sale of professional-illustration software for the Macintosh or Power Macintosh.

DATES: Complaint and Order issued October 18, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Mary Lou Steptoe, FTC/H–374, Washington, DC 20580. (202) 326–2556.

SUPPLEMENTARY INFORMATION: On Friday, August 5, 1994, there was published in the **Federal Register**, 59 FR 40023, a proposed consent agreement with analysis In the Matter of Adobe Systems Incorporated, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding in the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–27568 Filed 11–7–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902–3304]

Bee-Sweet, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a North Carolina corporation and its officer from representing that bee pollen products are effective as a cure or in mitigating certain conditions and physical ailments, and from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Waldman, FTC/New York Regional, 150 William S., Suite 1300, New York, N.Y. 10038. (212) 264–1242.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the Matter of: Bee-Sweet, Inc., a corporation; and Benny G. Morgan, individually and as an officer and director of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Bee-Sweet, Inc., a corporation, and Benny G. Morgan, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents; and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between proposed respondents, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Bee-Sweet, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its office or principal place of business located at 10370 North, NC Highway 150, Clemmons, North Carolina 27012.

2. Proposed respondent Benny G. Morgan is an officer of said corporation. Individually and in concert with others, he formulates, directs, and controls the acts and practices of corporate respondent. Respondent Benny G. Morgan's business address is 10370 North, NC Highway 150, Clemmons, North Carolina 27012.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) issue its complaint corresponding in form and substance with the attached draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this order, the following definitions shall apply:

A. "Bee pollen product" shall mean any product intended for human consumption or use consisting in whole or in part of bee pollen and/or bee propolis in any form.

B. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

It is ordered that respondents Bee-Sweet, Inc., a corporation, its successors and assigns, and its officer, Benny G. Morgan, individually and as officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any bee pollen product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Consumption of any bee pollen product is effective in the cure or mitigation of: (1) Allergies, (2) arthritis, (3) anorexia, (4) obesity, (5) fatigue, (6) arteriosclerosis, (7) anemia, (8) lack of sexual stamina, (9) back pain, (10) digestive disorders, (11) pulse irregularities, (12) acne, (13) bleeding, (14) burns, (15) colds, (16) sore throats, (17) tonsillitis, (18) ulcers, or (19) urinary infections.

B. Any bee pollen product is an effective antibiotic for human use.

II

It is further ordered that respondents Bee-Sweet, Inc., a corporation, its successors and assigns, and its officer, Benny G. Morgan, individually and as officer of said corporation, subsidiary, division, or other device, in connection with manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any product or service for human consumption or use in or affecting commerce, as "commerce" is defined in Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such product or service for human consumption will have any effect on a user's health or physical condition, unless at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III

It is further ordered that respondents Bee-Sweet, Inc., a corporation, its successors and assigns, and its officer, Benny G. Morgan, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any product or service for human consumption or use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, to existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV

Nothing in this order shall prohibit respondents from making any representation that is specifically permitted in labeling for any bee pollen product by regulations promulgated by the Food and Drug Administration pursuant to the Nutritional Labeling and Education Act of 1990.

V

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI

It is further ordered that respondents, or their successors and assigns, within thirty (30) days of the date of service of this order, shall send to each person or company that purchased for resale any bee pollen product from any respondent during the twelve (12) month period preceding the date of issuance of this order, a letter in the form set forth in Appendix I hereto. Each such letter shall be sent via the United States Postal Service, first class mail, postage prepaid, to the last known address of the intended recipient.

VII

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII

It is further ordered that:

A. Within thirty (30) days of the date of service of this order respondents shall distribute a copy of this order to respondents' officers, agents, representatives, and employees engaged in the marketing or sale of any bee pollen product.

B. For a period of seven (7) years from the date of service of this order respondents shall distribute a copy of this order to each of respondents' officers, agents, representatives, and employees who become engaged in the marketing or sale of any bee pollen product. Such distribution shall be made within three (3) days of each such person's becoming so engaged.

IX

It is further ordered that:

A. Respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, creation or dissolution of a subsidiary, or any other change in the corporation that may affect compliance obligations arising out of this order;

B. For seven (7) years from the date of service of this order, Benny G. Morgan shall notify the Federal Trade Commission within thirty (30) days of the discontinuance of his present business or employment and of his new business or employment the activities of which include the advertising, offering for sale, sale, or distribution of: (1) any bee pollen product or (2) any product or service advertised, offered for sale, sold, or distributed for effect on a user's health or physical condition. Each such notice shall include Benny G. Morgan's new business address and a statement of the nature of the business or employment in which he is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment.

X

It is further ordered that respondents shall, within sixty (60) days of the date of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Appendix I

(To be Printed On Bee-Sweet, Inc. Letterhead)

[Date]

Dear Customer, We at Bee-Sweet have voluntarily entered into an agreement with the Federal Trade Commission ("FTC"). We have agreed to a cease and desist order under which we are writing to each of our purchasers for resale of bee pollen products. The purpose of this letter is to inform you that according to the FTC, health claims previously made by Bee-Sweet for bee pollen products are unsubstantiated by competent and reliable scientific evidence and, according to the FTC, are false.

The FTC order requires that for any representation to be made that a product or service will affect a user's health or physical condition, we must have competent and reliable scientific evidence that substantiates the representation. Bee-Sweet's promotional literature must comply with these FTC requirements.

Sincerely, Benny G. Morgan, President, Bee-Sweet, Inc.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order from Bee-Sweet, Inc. and its principal, Benny G. Morgan.

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising for Bee-Sweet's bee pollen and bee propolis products. The Commission's complaint charges that the respondent's advertising contained false and unsubstantiated claims, in violation of Sections 5 and 12 of the FTC Act.

In particular, the complaint alleges that the Bee-Sweet ads falsely claim that bee pollen is effective in the mitigation or treatment of: (1) Allergies, (2) arthritis, (3) anorexia, (4) obesity, (5) fatigue, (6) arteriosclerosis, (7) anemia, (8) lack of sexual stamina, (9) back pain, (10) digestive disorders, and (11) pulse irregularities. The Complaint further alleges that the ads falsely claim that competent and reliable scientific studies have proven that consumption of bee pollen is effective in the mitigation and

treatment of numerous diseases and conditions, including: (1) Allergies, (2) athrities, (3) anorexia, (4) obesity, (5) fatigue, and (6) arteriosclerosis.

The Complaint also alleges that the Bee-Sweet ads contain false claims that bee propolis is effective in the mitigation or treatment of: (1) Acne, (2) allergies, (3) bleeding, (4) burns, (5) colds, (6) sore throats, (7) tonsillitis, (8) ulcers, and (9) urinary infections; that bee propolis is an effective antibiotic for human use; and that competent and reliable scientific studies have proven that consumption of bee propolis is effective in the mitigation and treatment of ulcers.

The Complaint finally alleges that Bee-Sweet implied that it had a reasonable basis for each of the above claims. According to the Complaint, Bee-Sweet did not have a reasonable basis for making these claims.

Paragraph I of the Order prohibits respondents from claiming that consumption of any bee pollen product is effective in the mitigation or treatment of the above conditions and ailments, or that any bee pollen product is an effective antibiotic for human use.

Paragraph II of the Order prohibits Bee Sweet from representing that a product or service will affect a user's health or physical condition unless, at the time of making the representation, it has and relies upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the Order requires respondents to cease and desist from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Paragraph IV of the Order provides that nothing in the order shall prohibit respondents from making any representations specifically permitted in labeling for any bee pollen product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Paragraph V of the Order provides that nothing in the order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

Paragraph VI of the order requires respondents to send, to each person or company that purchased respondent's bee pollen product for resale within the twelve month period preceding the date of issuance of the order, a notice regarding the FTC findings.

The remainder of the Order contains standard record-retention and notification provisions.

The purpose of this analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-27569 Filed 11-7-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3535]

BPI Environmental, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits among other things, a Massachusetts-based corporation from making unsubstantiated degradability claims for its plastic grocery bags or any of its plastic products in the future. The order also requires the respondent to possess competent and reliable evidence to substantiate claims regarding any environmental benefit of its plastic products.

DATES: Complaint and Order issued October 17, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Gary Cooper, Boston Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA. 02114-4719. (617) 424-5960.

SUPPLEMENTARY INFORMATION: On Wednesday, April 14, 1993, there was published in the **Federal Register**, 58 FR 19422, a proposed consent agreement with analysis In the Matter of BPI Environmental, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Commnets were filed and considered by the Commission. The Commission has ordered the issuance of the complaint, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94-27570 Filed 11-7-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3538]

Healthtrust, Inc.—The Hospital Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Tennessee-based corporation that provides acute care hospital services to divest Holy Cross Hospital of Salt Lake City to a Commission approved acquirer; to complete the divestiture within six months of the date of the order; and to consent to the appointment of a trustee, if the divestiture is not completed within six months. In addition, the consent order requires the respondent, for ten years, to obtain prior Commission approval before purchasing any acute care hospital or any hospital, medical or surgical diagnostic or treatment service or facility in the Utah counties of Weber, Davis, and Salt Lake.

DATES: Complaint and Order issued October 20, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Philip Eisenstat, FTC/S-3115, Washington, DC 205890. (202) 326-2756 or 326-2769.

SUPPLEMENTARY INFORMATION: On Wednesday, July 27, 1994, there was published in the **Federal Register** 59 FR 38176, a proposed consent agreement with analysis In the Matter of Healthtrust, Inc.—The Hospital Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20580.

agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–27571 Filed 11–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3534]

L&S Research Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires among other things, the New Jersey corporation and its officer to pay $1.45 million to the United States Treasury, prohibits the respondents from making misrepresentations regarding the efficacy of their bodybuilding and weight loss products, and requires them to possess competent and reliable scientific evidence to substantiate future bodybuilding and weight loss claims. In addition, the order restricts the use of endorsements, including "before" and "after" pictures, which do not represent the typical experience of users.

DATES: Complaint and Order issued October 6, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Richard Cleland or Nancy Warder, FTC/S–4002, Washington, DC 20580. (202) 326–3088 or 326–3048.

SUPPLEMENTARY INFORMATION: On Wednesday, July 27, 1994, there was published in the **Federal Register**, 59 FR 38183, a proposed consent agreement with analysis In the Matter of L&S Research Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–27573 Filed 11–7–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9255]

Trans Union Corporation; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This final order prohibits the Illinois-based credit bureau from distributing or selling target marketing lists based on consumer credit data, except under specific circumstances permitted by federal law. In addition, the final order requires the respondent to deliver a copy of this order to all present and future management officials having responsibilities with respect to the subject matter of this order.

DATES: Complaint issued December 15, 1992. Final order issued September 28, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Arthur Levin, FTC/S–4429, Washington, D.C. 20580. (202) 326–3040.

(15 U.S.C. 1681 *et seq.*)

Dolnald S. Clark,

Secretary.

[FR Doc. 94–27572 Filed 11–7–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, Summary Decision, Opinion of the Commission, Final Order, and statements by Commissioners Azcuenaga, Steiger, and Starek are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Environmental Dose Reconstruction International Workshop

Name: International Workshop on Environmental Dose Reconstruction.

Times and Dates: 1 p.m.–5:30 p.m., November 15, 1994; 9 a.m.–5:30 p.m., November 16, 1994; 9 a.m.–5:00 p.m., November 17, 1994; 8:30 a.m.–12:30 p.m., November 18, 1994.

Place: Doubletree Hotel, Concourse Room, 7 Concourse Parkway, Atlanta, Georgia 30328, telephone 404/395–3900.

Status: The proceedings of this technical workshop are open to the public, attendance limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The National Center for Environmental Health of CDC will sponsor a technical workshop regarding environmental dose reconstruction experiences in the United States and in the former Soviet Union. The objective of the workshop is to facilitate professional interaction and scientific exchange between notable international experts.

The primary focus of the workshop is to facilitate discussion among the participants on the topic of environmental dose reconstruction and obtain individual advice on how it may be used in support of epidemiologic studies.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 404/488–7040, FAX 404/488–7044.

Dated: November 1, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–27596 Filed 11–7–94; 8:45 am]

BILLING CODE 4163–18–M

Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in Cigarettes; Amendment

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice; amendment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is amending the ingredient list due date for 1994 and subsequent calendar years referenced in the "Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in Cigarettes" published in the **Federal Register** on Tuesday, December 3, 1985, [50 FR 49617].

FOR FURTHER INFORMATION CONTACT: Michael P. Eriksen, Sc.D., Director, Office on Smoking and Health, telephone (404) 488–5701.

SUPPLEMENTARY INFORMATION: On December 3, 1985, CDC published a

notice regarding the requirement for submission of the list of ingredients added to tobacco in cigarettes [50 FR 49617] and the following amendments are made to that notice:

On page 49617, second column, last sentence, under the heading "Dates:" change "December 31" to "March 31."

Dated: November 1, 1994.

Arthur C. Jackson,

Acting Deputy Director, Centers for Disease Control and Prevention (CDC).

Certified to be a true copy of the original.

Dated: November 11, 1994.

Carolyn D. Wilbur,

Certifying Officer.

[FR Doc. 94–27607 Filed 11–7–94; 8:45 am]

BILLING CODE 4163–18–P

Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products; Amendment

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice; amendment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is amending the ingredient list due date for 1994 and subsequent calendar years referenced in the "Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products" published in the **Federal Register** on Tuesday, February 1, 1994, [59 FR 4714].

FOR FURTHER INFORMATION CONTACT: Michael P. Eriksen, Sc.D., Director, Office on Smoking and Health, telephone (404) 488–5701.

SUPPLEMENTARY INFORMATION: On February 1, 1994, CDC published a notice regarding the requirement for submission of the list of ingredients added to tobacco in the manufacture of smokeless tobacco products [59 FR 4714] and the following amendments are made to that notice:

On page 4714, second column, under the heading "Dates:" change "December 31" to "March 31."

Dated: November 1, 1994.

Arthur C. Jackson,

Acting Deputy Director, Centers for Disease Control and Prevention.

[FR Doc. 94–27606 Filed 11–7–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 92N–0417]

Ashok Patel; Denial of Hearing and Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Mr. Ashok Patel's request for a hearing and is issuing a final order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Ashok Patel, 27 Ranch Rd., Upper Saddle River, NJ 07458, from providing services in any capacity to a person who has an approved or pending drug product application. FDA bases this order on a finding that Mr. Patel was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product, and relating to the regulation of a drug product under the act.

EFFECTIVE DATE: November 8, 1994.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Mr. Ashok Patel, a former senior vice-president of Par Pharmaceuticals, Inc. (Par), pled guilty and was sentenced on October 18, 1989, for giving an unlawful gratuity to a public official, a felony offense under 18 U.S.C. 201(c)(1)(A). The basis for this conviction was Mr. Patel's payment of approximately $4,500 to an FDA chemistry review Branch Chief (public official) who was involved in the regulation of Par's drug products and who was specifically responsible for supervising the chemists who reviewed Par's applications to determine whether those applications met certain statutory standards for approval.

In a certified letter received by Mr. Patel on December 12, 1992, the Interim Deputy Commissioner for Operations offered Mr. Patel an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Mr. Patel from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar Mr. Patel on its finding that he was convicted of a felony under Federal law for conduct relating to the development, approval, and regulation of Par's drug products.

The certified letter also informed Mr. Patel that his request for a hearing could not rest upon mere allegations or denials, but it must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also notified Mr. Patel that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated January 7, 1993, Mr. Patel requested a hearing, and in a letter dated February 11, 1993, Mr. Patel submitted arguments and information in support of his hearing request. In his request for a hearing, Mr. Patel acknowledged that he was convicted of a felony under Federal law as alleged by FDA. However, Mr. Patel argued that FDA's findings based on that conviction are incorrect and that the agency's proposal to debar him is unconstitutional.

The Interim Deputy Commissioner for Operations has considered Mr. Patel's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing. Moreover, the legal arguments that Mr. Patel offers do not create a basis for a hearing (see 21 CFR 12.24(b)(1)).

Mr. Patel's arguments are discussed below in section II of this document.

II. Mr. Patel's Arguments in Support of a Hearing

A. Mr. Patel's Conduct

Mr. Patel first alleges that FDA's findings are incorrect because his conviction does not involve conduct relating to the development, approval, or regulation of a drug product under the act. Mr. Patel claims that the conviction was based on his giving an illegal gratuity in response to repeated requests of the public official for personal reasons unrelated to the drug approval process.

This argument is unconvincing and fails to raise a genuine and substantial issue of fact. Mr. Patel pled guilty to and was convicted of violating 18 U.S.C. 201(c)(1)(A) for his payment of approximately $4,500 to an FDA chemistry review Branch Chief who was

involved in the regulation of Par's drug products (21 U.S.C. 335a(l)).

In order to be convicted under 18 U.S.C. 201(c)(1)(A), one must give, otherwise than as provided by law for the proper discharge of official duty, something of value to a public official because of an official act performed or to be performed by such official. "Official act" is defined by 18 U.S.C. 201(a)(3) as "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." Hence, as a matter of law, Mr. Patel's conviction establishes that his action was intended to influence official action. The public official to whom the illegal gratuity was given was a Branch Chief of one of the four chemistry review branches within FDA's Division of Generic Drugs, whose sole responsibilities were the review of applications submitted by generic drug manufacturers seeking FDA's approval to market their products to the public, and the general regulation of generic drugs. Therefore, Mr. Patel's conviction under 18 U.S.C. 201(c)(1)(A) is alone sufficient to establish that his felony conviction was for conduct relating to the development and approval, including the process for development and approval, of a drug product, and for conduct relating to the regulation of a drug product.

Mr. Patel argues that the judge who sentenced him did not view the payments as affecting the development, approval, or regulation of a drug product. He supports this argument with the judge's statements, "It's not the question of improper handling * * *," and "There is no evidence that they did any favor * * *," (see sentencing transcript, pp. 7 and 17). However, the judge does not imply that the gratuities were unrelated to the development, approval, or regulation of a drug product. To the contrary, he compares the gratuities to insurance when he states, "* * * like insurance you got somebody who favors you as opposed to somebody who is against you, get somebody friendly towards you so when you do get the application[s] they don't hide them * * *" (see sentencing transcript, p. 6). While there is no evidence of a direct benefit to Mr. Patel, the fact that he paid the gratuities for "insurance" of his drug applications is sufficient to relate to the development, approval, and regulation of a drug product.

Finally, Mr. Patel had ample opportunity to contest the Government's allegations during the criminal case prior to his conviction. Thus, Mr. Patel is collaterally estopped from arguing that he did not provide the gratuity "for or because of any official act performed or to be performed."

B. Retroactive Application of the Act

Mr. Patel argues in his letter requesting a hearing that the debarment provisions are not retroactive, and therefore, because his crime predated the act, it does not fall under the act.

Mr. Patel's argument that section 306(a)(2) of the act should not be applied retroactively is unpersuasive. A commonly used rule of statutory construction states that where Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion. (*I. N. S.* v. *Cardoza-Fonseca*, 107 S.Ct. 1207, 1213 (1987), citing *Russelo* v. *United States*, 104 S.Ct. 296, 300 (1983).) Under this rule of statutory construction, section 306(a)(2) of the act is clearly retroactive. Section 306(a) of the act treats mandatory debarment of business entities differently from mandatory debarment of individuals with respect to retroactivity. Mandatory debarment of business entities under section 306(a)(1) of the act is not retroactive because it only applies to convictions "after the date of enactment of this section." However, section 306(a)(2) of the act, which pertains to mandatory debarment of individuals, does not contain this limiting language. Therefore, if Congress had intended for section 306(a)(2) of the act not to be retroactive, it would have included the language "after the date of enactment of this section." The limitation does not apply where it was excluded.

Another appropriate application of this rule of statutory construction is with regard to section 306(l)(2) of the act, which sets out the effective dates for each provision of the act. Section 306(l)(2) of the act also indicates that section 306(a)(2) is retroactive. The only limitation section 306(l)(2) sets on section 306(a) of the act is that section 306(a) shall not apply to a conviction that occurred more than 5 years before the initiation of an agency action. This language indicates that any applicable conviction may be used as the basis for debarment, so long as it occurred no more than 5 years prior to the initiation of debarment proceedings. Certain other provisions covered in section 306(l) of the act are further limited by the statement that the section shall not apply to an action that occurred before June 1, 1992. Thus, when Congress intended that a certain section not be retroactive, it set a specific effective date or used specific limiting language as in section 306(a)(1) of the act. Congress' intentional omission of an effective date for section 306(a)(2) of the act indicates its intent that this section be retroactive.

Finally, because section 306(a)(2) of the act does not explicitly address the retroactivity issue, FDA's interpretation must be based on a permissible construction of the act. A permissible construction is one that is reasonable and consistent with the purpose of the statute. (See *Chevron* v. *N. R. D. C.*, 104 S. Ct. 2778 (1984), and *Schering Corp.* v. *Sullivan* (782 F. Suppl. 645 (1992).) The purpose of the Generic Drug Enforcement Act of 1992 (GDEA) is "to restore and ensure the integrity of the ANDA approval process and to protect the public health." (See section 1, Pub. L. 102–282, The Generic Drug Enforcement Act of 1992.) FDA's interpretation is consistent with this purpose. The GDEA was passed in response to the widespread fraud and corruption revealed by the generic drug investigations that began in the late 1980's. (See House Committee Report, October 24, 1991, at p. 11.) Congress clearly enacted the GDEA in order to take action against the wrongdoers of the 1980's, as well as current wrongdoers. FDA's interpretation that section 306(a)(2) of the act is retroactive is reasonable in that it is consistent with the purpose of the GDEA, which is to remedy past fraud and corruption.

C. The Ex Post Facto Clause

Mr. Patel also argues that the ex post facto clause of the U.S. Constitution prohibits application of section 306(a)(2) of the act to him because this section was not in effect at the time of Mr. Patel's criminal conduct, and it changes the legal consequences of his violation of the law. On May 13, 1992, Congress amended the Federal Food, Drug, and Cosmetic Act to include section 306(a)(2), Mr. Patel was convicted on October 18, 1989.

An ex post facto law is one that reaches back to punish acts that occurred before enactment of the law or that adds a new punishment to one that was in effect when the crime was committed. (*Ex Parte Garland*, 4 Wall. 333, 377, 18 L. Ed. 366 (1866); *Collins* v. *Youngblood*, 110 S.Ct. 2715 (1990).)

Mr. Patel's claim that application of the mandatory debarment provisions of the act is prohibited by the ex post facto clause is unpersuasive. Because the intent behind debarment under section 306(a)(2) of the act is remedial rather

than punitive, this section does not violate the ex post facto clause.

The congressional intent with respect to actions under section 306(a)(2) of the act is clearly remedial. Congress created the GDEA in response to findings of fraud and corruption in the generic drug industry. Both the language of the GDEA itself and its legislative history reveal that the purpose of the debarment provisions set forth in the GDEA is "to restore and ensure the integrity of the ANDA approval process and to protect the public health." (See section 1, Pub. L. 102–282, The Generic Drug Enforcement Act of 1992.) This is a remedial rather than punitive goal. (See *Manocchio* v. *Kusserow*, 961 F.2d 1539, 1542 (11th Cir. 1992) (exclusion of physician from participation in medicare programs because of criminal conviction is remedial, not punitive).) Supporting the remedial character of debarment is a statement by Senator Hatch in the Congressional Record of April 10, 1992, at S 5616, "* * * [t]he legislation * * * provides a much-needed remedy for the blatant fraud and corruption uncovered in the generic drug industry * * * during the last 3 years."

The Supreme Court has long held that statutes that deny future privileges to convicted offenders because of their previous criminal activities in order to ensure against corruption in specified areas do not impose penalties for past conduct and, therefore, do not violate the ex post facto prohibitions. (See e.g., *Hawker* v. *New York*, 170 U.S. 189, 190 (1898) (physician barred from practicing medicine for a prior felony conviction); *DeVeau* v. *Braisted*, 373 U.S. 154 (1960) (convicted felon's exclusion from employment as officer of waterfront union is not a violation of the ex post facto clause).)

In *DeVeau*, the court upheld a law that prohibited a convicted felon from employment as an officer in a waterfront union. The purpose of the law was to remedy the past corruption and to ensure against future corruption in the waterfront unions. The court in *DeVeau*, 363 U.S. at 160, stated:

> The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession * * *.

As in *DeVeau*, the legislative purpose of the relevant statute is to ensure that fraud and corruption are eliminated from the drug industry. The restrictions placed on individuals convicted of a felony under Federal law are not intended as punishment but are "incident to a regulation of a present situation" (*DeVeau*, 363 U.S. at 160) and necessary in order to remedy the past fraud and corruption in the industry.

C. The Double Jeopardy Clause

In his final argument, Mr. Patel claims that the proposal to debar him under section 306(a)(2) of the act violates the double jeopardy clause of the Fifth Amendment to the U.S. Constitution. The double jeopardy clause states that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." Mr. Patel relies on *U.S.* v. *Halper*, 490 U.S. 435 (1989), to argue that the Fifth Amendment double jeopardy clause should prevent his debarment because "jeopardy" can attach even in a purely civil proceeding, so long as the civil sanction is punitive, not remedial. He further argues that his proposed permanent debarment is punitive because it would eliminate any opportunity to demonstrate that he would no longer be a threat to the integrity of the drug approval process.

Mr. Patel's argument is unpersuasive. First, "jeopardy" cannot attach because the effect of section 306(a)(2) of the act is remedial, not punitive. As discussed above, the legislative goal of this section is to restore and ensure the integrity of the drug approval process and to protect the public health by eradicating fraud and corruption from the drug industry. This is plainly a remedial rather than a punitive goal. (*Manocchio* v. *Kusserow*, 961 F.2d at 1542.)

The fact that Mr. Patel's debarment is permanent rather than temporary does not signify that the legislation is nonremedial or punitive. The Supreme Court has upheld laws which, for remedial purposes, permanently bar a class or group of individuals from certain occupations due to a prior criminal conviction. (See *Hawker* v. *New York*, 170 U.S. 189, 190 (1898); *DeVeau* v. *Braisted*, 373 U.S. 154 (1960).)

Second, the double jeopardy clause is inapplicable to FDA's proposal to debar Mr. Patel because the sanctions imposed by section 306(a)(2) of the act are rationally related to the remedial governmental goal of eradicating fraud from the drug industry.

Due to the potentially serious consequences to the public health of fraud and corruption in the drug industry, the permanent debarment of convicted felons like Mr. Patel is not an excessive means to eliminate fraud from the industry. The legislative history of the GDEA is replete with statements, some cited above, that the act provides a reasonable means of ridding the generic drug industry of widespread corruption and restoring consumer confidence in generic drugs.

Mr. Patel acknowledges that he was convicted as alleged by FDA in its proposal to debar him and has raised no genuine and substantial issue of fact regarding this conviction. While Mr. Patel's legal arguments do not create a basis for a hearing, FDA has considered these arguments before taking final action and has found them unpersuasive. Accordingly, the Interim Deputy Commissioner for Operations denies Mr. Patel's request for a hearing.

III. Findings and Order

Therefore, the Interim Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Mr. Ashok Patel has been convicted of a felony under Federal law for conduct: (1) Relating to the development or approval, including the process for development or approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Ashok Patel is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective November 8, 1994 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)).

Any person with an approved or pending drug product application who knowingly uses the services of Mr. Patel in any capacity, during his period of debarment, will be subject to civil money penalties (21 U.S.C. 335b(a)(6)). If Mr. Patel, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by or with Mr. Patel's assistance during his period of debarment.

Mr. Patel may file an application to attempt to terminate his debarment, pursuant to section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 92N–0417

and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–27668 Filed 11–7–94; 8:45 am]

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National Institutes of Health

Office of Science Policy and Technology Transfer

Developing Sponsored Research Agreements: Considerations for Recipients of NIH Research Grants and Contracts

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) published a proposed draft of "Developing Sponsored Research Agreements: Considerations for Recipients of NIH Research Grants and Contracts" (hereafter referred to as Considerations) in the **Federal Register** on June 27, 1994. The document is to provide recipients of NIH grants and contracts (hereafter referred to as Recipients) with issues and points to consider in developing sponsored research agreements with commercial entities, where such agreements may include research activities which are fully or partially funded by NIH. Comments on the document were requested by July 27, 1994. In response to that Notice, NIH received comments from 18 respondents, two of whom represented a large number of research intensive institutions.

In general, the comments were favorable and supportive of the NIH's action to assist its grantees and contractors in administering their activities in accordance with public law and the terms of their awards. There were a number of minor editorial comments that have been given consideration and for the most part accepted. A summary of the comments and the NIH response are presented below. The full text of the final document is also presented.

FOR FURTHER INFORMATION CONTACT: Theodore J. Roumel, Assistant to the Deputy Director for Science Policy and Technology Transfer, NIH, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804, (301) 496–7057, ext. 203 (not a toll-free number).

Summary of Comments

In response to the June 27 Notice, NIH received 18 comments, including two from organizations representing a large number of research intensive institutions. Below are the substantive comments offered and NIH's response, broken down by the section of the Considerations to which they pertain.

Introduction

In order to limit confusion as to requirements that may apply to grantees and contractors, the term Grantee has been replaced by the term Recipient.

One entity questioned the need for the issuance of the Considerations. As was stated in the document, the NIH, as a steward of Federal funds, has the responsibility to advise Recipients as to the requirements that attach to the receipt of NIH funds and to offer technical assistance in adhering to those requirements. Recipients have varying levels of sophistication in their technology transfer activities and the NIH is trying to assist those institutions in addressing substantive issues based on an extensive review of sponsored research agreements. In keeping with its belief that:

> Both the public and private sectors must work together to foster rapid development and commercialization of useful products to benefit human health, stimulate the economy, and enhance our international competitiveness, while at the same time protecting taxpayers' investment and safeguarding the principles of scientific integrity and academic freedom,

the NIH has developed the Considerations to encourage Recipients to address issues such as fair and open competition, dissemination and commercialization of research results, and the maintenance of academic freedom in developing sponsored research agreements with commercial entities.

Purpose

Several institutions sought greater clarification as to the universe to which the Considerations were addressed, e.g. NIH awards, all Federal awards, or any sponsored program agreement. The Bayh-Dole Act applies to all Federal agencies. However, the NIH can only provide guidance to Recipients within its jurisdiction. The INTRODUCTION and PURPOSE sections of the document have been modified to clearly indicate that the requirements of the Bayh-Dole Act and its implementing regulations apply to all NIH sponsored research, whether fully or partially funded. The document provides information on the Act and the regulations and guidance to institutions when situations arise where NIH has fully or partially funded research activities that may be included in a sponsored research agreement.

Three respondents commented on the definition of a sponsored research agreement. The existing definition in the INTRODUCTION section has been modified to more clearly state what is meant by the term. One respondent proposed that the definition be used with NIH funding only. This was not accepted because the term is one of general applicability while the guidance will deal with only those types of agreements that may involve NIH funded activities.

One respondent urged that NIH point out that sponsored research agreements differ from one another and must be viewed on a case by case basis. While it was our opinion that we had provided that sense, we have modified the last paragraph of the PURPOSE section to reflect that proposed sponsored research agreements should be reviewed on a case by case basis and that provisions of those documents should be reviewed both individually and in their totality.

Background

Several of the respondents raised concerns about individual situations and whether or not the Considerations should be used in those situations. In developing the Considerations, it was the intent of the NIH to provide some general guidance for developing agreements and not to specify how an agreement should be written, how an institution should respond in certain situations, or prescribe any special language that should be used other than that which is already required by law and existing policy applicable to NIH funded projects. In addition, it was not the intent of the guidance to interpret or otherwise explain the Bayh Dole implementing regulations, which were issued by the Department of Commerce. Issues regarding the regulations and its requirements need to be addressed to the Department of Commerce.

One respondent questioned how far the Federal rights extend to sponsored activities not specifically funded by the Federal government. If research results from an NIH funded activity or a piece of equipment purchased under an NIH funding agreement was later used in a sponsored research agreement which was being funded solely by the sponsor and this led to the development of a new invention, would Federal rights apply to any new invention made under

that sponsored research agreement? In general, Federal rights attach only if an invention is conceived or first actually reduced to practice under a Federal funding agreement. Mere use of equipment, data, or pre-existing inventions does not mean that all work under the sponsored research agreement is subject to the requirements of the Bayh Dole Act.

Universal Points for Consideration

Dissemination of Research Results

Several respondents commented on the time frames related to possible delays in disclosure of research findings and the period for consideration of a license option. Comments were mostly supportive, however, there were several comments that the time frames offered might be too tight. It is of the utmost importance to the NIH to have research results disseminated and innovations brought to commercialization as rapidly as possible. Time frames were provided as guidance to institutions which need to exert their best efforts to accommodate this important objective. The Considerations recognize that different situations may dictate a shorter or longer period of time. To protect intellectual property it may be necessary to grant longer periods of time. However, each situation must be reviewed on a case by case basis and the institution must determine the appropriateness of the time frames for those particular circumstances.

On the basis of comments received, we have modified the time frame for review under Dissemination of Research Results to read thirty (30) to sixty (60) days, rather than thirty (30) days which was viewed by several respondents as being too constraining.

Utilization

One respondent agreed with the idea of providing a commercial sponsor of the research an option to license resulting intellectual property with no second chance to license. However, the respondent believes that it would seem appropriate that the sponsor should be given an equal opportunity with its competitors to make a bid on the license when the terms of the license offered to a competitor differed from the terms offered to the sponsor.

The rationale for the language in the Considerations was that if negotiations, within a reasonable period of time, do not end in a license with the sponsor, the Recipient should be free to negotiate with others to ensure the rapid transfer of technology to commercialization. This would not preclude a Recipient, at its discretion, from entering into new negotiations with the sponsor, especially when the Recipient has modified the terms of the license being offered to a competitor from that which it previously offered to the sponsor.

Notification Requirements and Records

In response to one comment, the listing of timeliness considerations has been revised to reflect more accurately the language in the Bayh-Dole Act and the implementing regulations. One additional consideration has been added, i.e., the specification in patent applications that the invention was made with government support. This is an important requirement which was omitted in the original document.

Two respondents expressed concern over the requirement that a Recipient disclose an invention to the NIH prior to the publication of any description of the invention. One of those respondents stated that the language was incorrect. The language cited in the Considerations is a grants policy requirement, has been in place for a number of years, and is consistent with the Bayh-Dole requirements for notification of inventions. However, since this appears to have raised a concern, we have deleted the subject sentence and inserted information stating the source of the requirement.

The comments related to notification requirements and records reinforce the need for institutions to have adequate systems to meet Federal requirements. Those institutions which have separated their technology transfer activities from their sponsored research administration activities may have difficulty in assuring coordination of actions, submission of reports, and retention of appropriate records. Institutions need to ensure that they have systems in place which coordinate actions involving technology transfer and sponsored research administration to preserve the rights of the government and be responsive to requests for information and reporting.

Points for Special Consideration

Three respondents commented on their concern regarding the suggestion that Recipients should avoid any other unusual practice or stipulation that might generate public concern or undermine rather the serve the public interest. With innovation and creativity being a major part of the evolving field of technology transfer, it is not possible for this document to cover every specific problem, concern or consideration that may occur in the future. Therefore, this language was written to encourage institutions to be constantly alert in their review of potential agreements with special attention to conformity with the Bayh-Dole Act, implementing regulations, and NIH funding requirements.

Other Points for Consideration by Nonprofit Recipients

Three respondents expressed concern regarding the language on small businesses. One had general concerns about the small business preference and offered some additional language. A second also had apprehensions with the small business preference being interpreted as a "must use" requirement. A third respondent was concerned that the form and level of documentation be specified.

In the section on special provisions for nonprofit organizations, the regulation states that such organizations will make efforts to execute a license with small businesses and, in certain circumstances, provide a preference for such businesses. However, the decision to give a preference in any specific case is at the discretion of the Recipient. Additionally, the regulation states that Recipients must be satisfied that the small business firms have the capability and resources to carry out plans or proposals. Having documentation sufficient to support its decisions on small business preferences is a key Recipient responsibility.

As noted above, these Considerations have been prepared for use by Recipients; the regulations implementing the Bayh-Dole Act are issued by the Department of Commerce and the NIH does not have authority to modify their content.

The NIH appreciates the effort taken to provide comments on this document and is pleased that the document is viewed as being a valuable technical assistance tool.

Dated: October 28, 1994.

Daryl A. (Sandy) Chamblee,

Acting Deputy Director for Science Policy and Technology Transfer, National Institutes of Health.

Developing Sponsored Research Agreements: Considerations for Recipients of NIH Research Grants and Contracts

Introduction

The National Institutes of Health (NIH) is the principal biomedical and behavioral research agency within the Federal Government. Its mission is to improve human health by increasing scientific knowledge related to health and disease through the conduct and support of biomedical and behavioral research. The NIH advances its mission through intramural research activity and

the award of research grants and contracts to institutions of higher education, research institutes and foundations, and other non-profit and for-profit organizations (hereafter referred to as Recipients). Whenever a Recipient's research work is funded either in whole or in part through NIH research grants, contracts, and cooperative agreements, that activity is subject to the requirements of Public Law 96–517, known as the Bayh-Dole Act of 1980 [1] (hereafter referred to as "Bayh-Dole" or "the Act"). Those Recipients are required to maximize the use of their research findings by making them available to the research community and the public at large and through their timely and effective transfer to industry for development.

Recipients also have interactions with industry which may take many forms, including industrial liaison programs, spinoff companies, consortia, commercial licenses, material transfers, consultations, and clinical trial agreements. This document addresses one form of Recipient/industry interaction, sponsored research agreements. The NIH has focused a substantial amount of its recent attention on this relationship when NIH funds may also be involved. The term sponsored research agreement means a written document which describes the relationship between Recipients and commercial entities in which Recipients receive funding or other consideration to support their research in return for preferential access and/or rights to intellectual property deriving from Recipient research results.

Although Recipients are primarily responsible for the implementation of the Bayh-Dole requirements, NIH, as a steward of Federal funds, has a responsibility to provide guidance on issues which may place Recipients at odds with Federal law and/or NIH funding requirements.

Purpose

The purpose of this document is to provide Recipients with issues and points to consider in developing sponsored research agreements with commercial entities, where such agreements may include research activities which are fully or partially funded by NIH. The intent is to assist Recipients in ensuring that those agreements comply with the requirements of the Bayh-Dole Act and NIH funding agreements while upholding basic principles of academic freedom.

This document represents the culmination of various activities, under the aegis of the NIH Task Force on Commercialization of Intellectual Property Rights from NIH Supported Extramural Research, which included the review and analysis of 375 sponsored research agreements from 100 Recipients, meetings with industry, academia, and other Government agencies, and a specially convened public forum involving subject matter experts from outside of the NIH.

The NIH recognizes that sponsored research agreements are unique, creative devices which reflect the needs and interests of the parties involved and require a delicate balance of risks and benefits to all of the parties. Although this document identifies a number of points to consider, with some necessitating more scrutiny than others, no single point or issue is so dominant that it is likely to be fatal to an agreement. Rather, the juxtaposition of multiple factors or clauses in an agreement and their synergy needs to be assessed. Therefore, Recipients should review each proposed sponsored research agreement on a case by case basis, and the provisions both individually and in the context of the entire agreement.

Background

While NIH policies on the use of research results have been in effect for some time, commercial development of research results took a major step forward with the passage of the Bayh-Dole Act. Congress passed the Act in response to significant concerns about the United States' competitiveness and data indicating that rights to many inventions developed under Federal grants and contracts and assigned to the Federal government were not being commercialized. In general, the Act authorizes Recipients to retain title to inventions resulting from their Federally funded research and to license such inventions to commercial entities for development.

Specifically, the Act states that:

It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from Federally supported research or development; to encourage maximum participation of small business firms in Federally sponsored research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; to ensure that inventions made by nonprofit organizations and small business firms are used to promote free competition and enterprise; to promote the commercialization and public availability of inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area.[2]

The provisions of the Act have been implemented through regulations issued by the Department of Commerce and adopted by the Department of Health and Human Services.[3]

The Act serves the public not only by encouraging the development of useful commercial products such as drugs and clinical diagnostic materials, but also by providing economic benefits, and enhancing U.S. competitiveness in the global market place.

Since its passage, the Bayh-Dole Act has been effective in promoting the transfer of technology from Recipients to industry as evidenced by the aggressive pursuit of patenting and licensing and the proliferation of university/industry collaborations.[4] In addition, the development of many new and important drugs and devices has been facilitated by increased industrial support for academic research [5] and the explosion in the licensing of university owned inventions.[6] Furthermore, statistics indicate that the Act has provided significant economic benefits which are projected as increasing between 25 to 30 percent per year.[7]

[1] Public Law 96–517, enacted December 12, 1980, Chapter 18—Patent Rights in Inventions Made with Federal Assistance.

[2] Public Law 96–517, Chapter 18, Patent Rights in Inventions Made With Federal Assistance, Sec. 200.

[3] The Department of Commerce regulations are at 37 Code of Federal Regulations (CFR) Part 401 and supersede applicable portions of 45 CFR Parts 6 and 8.

[4] Approximately one in every four university patents issued in the late 1980s was for a biomedical or health related invention. In the early 1970's, the ratio was one in eight. Source: Science and Engineering Indicators, 1993, National Science Foundation.

[5] While still representing less than 10 percent of the total funding for academic research, it is estimated that nearly 2 percent of United States industry's expenditures for R&D now goes to academic institutions, as compared with less than 1 percent in 1971. Source: Science and Engineering Indicators, 1993, National Science Foundation.

[6] Over 1000 licenses or options were executed in Fiscal Year 1992 by 260 academic institutions surveyed. The institutions also reported that they had over 5000 active licenses in place at the time of the survey. Source: Association of University Transfer Managers Licensing Survey FY 1991–1992, published October, 1993.

[7] In FY 1992 sales and employment attributable to the Act were estimated to be as follows: between $9 and $13 billion in sales and 50–100,000 jobs, with an annual increase of between 25 and 30 percent. Source: Dr. Ashley J. Stevens, Director, Office of Technology Transfer, Dana-Farber Cancer Institute, Association of University Technology Managers Winter Meeting, 1994.

Recipient Responsibilities

In keeping with the objectives and policies of Bayh-Dole, it is incumbent upon Recipients to effectively and efficiently transfer technology to industry for commercial development. However, in doing so Recipients must also comply with the specific terms of the Act, its implementing regulations, and the terms and conditions of each NIH award and ensure that such compliance is reflected in their agreements with commercial entities.

In carrying out that responsibility, at a minimum, Recipients need to concern themselves with issues involving maintenance of academic freedom for institutions and investigators, fair access to information, timeliness of notification and reporting requirements, rational licensing to commercial entities, and adherence to the specific requirements of the Act and NIH funding agreements.

While sponsored research agreements frequently are used where basic research is involved and no invention exists to disclose nor intellectual property to license at the time the agreement is executed, Recipients should anticipate such issues and consider the following points in developing a sponsored research agreement.

The first section, Universal Points for Consideration, highlights several requirements and issues that Recipients should consider in all proposed sponsored research agreements. The second section, Points for Special Consideration, delineates circumstances which suggest heightened scrutiny. The third section, Other Points for Consideration by Nonprofit Recipients, contains additional considerations which apply only to nonprofit Recipients.

Universal Points for Consideration

Academic Freedom

Academic research freedom based upon social collaboration within the scientific community and the scrutiny of claims and beliefs by its members is at the heart of scientific advancement within the United States. Primarily through Federal funding, academic institutions have contributed to fundamental knowledge and techniques upon which current and future scientific discoveries and technological innovations depend. Therefore, the preservation of academic freedom for Recipient institutions and researchers is of considerable concern to the NIH.

Recipients should be aware that their interest in the scientific endeavor covered by a sponsored research agreement and the interest of the industrial sponsor may not be totally consonant. As a result, in general, Recipients should ensure that sponsored research agreements preserve the freedom for academic researchers to select projects, collaborate with other scientists, determine the types of sponsored research activities in which they wish to participate, and communicate their research findings at meetings, and by publication and through other means.[8] Academic researchers also should be made aware of any agreements executed by their institutions which may restrict their ability to pursue research activities and publish research results. Recipients also should maintain their independence to pursue their own mission without undue influence or restraint by their industrial sponsors. For example, an agreement which gives an industrial sponsor the ability to direct the research mission of a Recipient would be inappropriate.

Dissemination of Research Results

Recipients must ensure that the timely dissemination of research findings is not adversely affected by the conditions of a sponsored research agreement. For example, in the case of research grants, the PHS Grants Policy Statement, incorporated as a condition of each NIH research grant, details policies on publication of research results, responsibilities to disseminate information on unique research resources, and standards of conduct for the organization's employees.

Although an industrial sponsor's consideration of the commercial applicability of specific research findings and/or the filing of a patent application to secure intellectual property rights may justify a need to delay disclosure of research findings, a delay of thirty (30) to sixty (60) days is generally viewed as a reasonable period for such activity. Depending upon the individual circumstances, Recipients could consider a shorter or longer period of time, as they deem appropriate. In addition to the timing, a sponsored research agreement which requires the disclosure of inventions and research findings developed with NIH funds to an industrial sponsor prior to submission of the invention disclosure to the NIH, may be inconsistent with the terms and conditions of the NIH grant or contract.

[8] The NIH recognizes that there may be certain instances when it may be reasonable for a Grantee institution to agree to minimally restrict a researcher from collaborating with another industrial partner when the subject matter of such collaboration overlaps with that of the sponsored research agreement.

Utilization

The NIH also has a concern that Federally funded technology be developed and commercialized in an expedited and efficient manner. In deciding to enter into an agreement with a commercial entity, Recipients should consider whether the organization has the experience, capability, and commitment to bring its likely inventions to commercial status.

Additionally, Recipients should not enter into sponsored research agreements that permit a sponsor to tie up the development of a technology by acquiring exclusive licensing rights to the product of given research results before deciding whether or not it will actively develop and commercialize that product. Recipients could provide a sponsor with an option to pursue licensing rights. It is reasonable for such options to be limited to no more than six (6) months after disclosure to the authorized representative of the sponsor. However, individual circumstances may dictate a shorter or longer period of time. After the option period expires, the technology should become available for licensing to other entities. Moreover, once a sponsor decides not to exercise its option, normally, the agreement should not provide for a second opportunity to obtain licensing rights by matching other parties' offers for the rights. Such actions enable Grantees to license to companies presenting a bona fide commercialization plan, thus expediting the availability of products to the public.

In order to ensure that technology is developed rapidly and is not being subjected to delays, Recipients should also establish, maintain, and actively administer policies and procedures which ensure that licenses arising from sponsored research agreements contain due diligence requirements and benchmarks to monitor performance. When future rights to as yet undiscovered inventions are included in a sponsored research agreement, benchmarks for development of each such invention should be established as they become available for commercial development. In addition, Recipients should actively monitor licensees in accordance with those requirements and benchmarks to assure compliance with Recipient obligations under the Act.

Recipients also need to ensure that they have internal systems to provide required utilization reports to the NIH on each invention. Those reports are required by Department of Commerce regulation and include such items as the status of development, first commercial

sale, and amount of gross royalties received. Detailed information about the precise utilization report requirements can be obtained from the NIH Office of Extramural Research.

U.S. Manufacture

The Bayh-Dole Act requires that products developed with Federal funds and used and sold in the United States, be substantially manufactured here. In granting exclusive rights to use or sell any subject invention in the United States, Recipients must ensure that each agreement requires that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. In individual cases, a request for waiver may be considered by the NIH. A determination will be made based upon a showing by the Recipient that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible. In granting a waiver of the U.S. manufacture requirement, the NIH may consider other benefits conferred on the United States by the potential license including the rapid availability of a product of benefit to the health of the American people.

Notification Requirements and Records

In sponsored research agreements, as in other contexts, Recipients must also ensure that invention, patent and license notification requirements are adhered to in a timely manner. Timeliness considerations include prompt (1) employee notification to Recipient administrators of an invention made under NIH funding, (2) written disclosure to NIH in sufficient technical detail to adequately describe the invention, (3) written election to the NIH of whether or not the Recipient will retain title to such invention, (4) adherence to time frames for initial filing of patent applications in the United States and the filing of foreign patent applications, (5) execution and delivery of all instruments necessary to establish or confirm NIH rights throughout the world in the subject inventions to which the Recipient has elected to retain title, (6) notification to the NIH of any decision not to continue patent prosecution, pay fees, or defend the patent in a reexamination or opposition proceeding on a patent, in any country, (7) conveyance of title to NIH when requested, and (8) specification in any United States patent applications and any patent issuing thereon covering a subject invention that the invention was made with government support.[9]

Specifically, as conditions of NIH grants and cooperative agreements, Recipients must fully notify the NIH in a timely manner when an invention has been developed. In addition, PHS grants policy requires that when applying for continued funding in each subsequent funding period, the institution must also provide either a listing of all inventions made during the preceding budget period or a certification that no inventions were made during the applicable period. A final invention statement and certification listing all inventions that were conceived or first actually reduced to practice during the course of work under the funding agreement is required within ninety (90) days following the expiration or termination of support on an applicable project. Additionally, Recipients need to adhere to the specific requirements contained in the patent clauses of their contracts as well as the general provisions of the Federal Acquisition Regulations.

Furthermore, Recipients must also document their compliance with the requirements of the Act, regulations, and terms and conditions of NIH awards, generally and as related to sponsored research agreements. Recipient records must be available for review by authorized Federal officials in accordance with the terms and conditions of the award. For example, concerning access and retention of records under NIH grants and cooperative agreements, regulations require grantees to retain financial and programmatic records, supporting documents, statistical records, and all other grantee records which may reasonably be considered pertinent to a grant or subgrant.[10]

Points for Special Consideration

The NIH has identified several situations, outlined below, in which Recipients should exercise heightened sensitivity and scrutiny in the development of sponsored research agreements. Such an exercise should confirm that a sponsored research agreement does not adversely impact NIH funded activities and Recipient concerns such as academic freedom, or shift control of the Recipient's scientific activities, management, and independence into the hands of the sponsor. While there is no requirement that Recipients submit proposed sponsored research agreements to the NIH for review, at the discretion of the Recipient, the NIH Deputy Director for Extramural Research may be consulted for additional clarification in instances where special considerations warrant.

First, Recipients should subject their sponsored research agreements to heightened scrutiny when one or more of the following threshold criteria apply:

(a) The amount of financial support from the sponsor meets or exceeds $5 million in any one year, or, $50 million total over the total period of funding under the agreement;

(b) The proportion of funding by the sponsor exceeds 20 percent of the Recipient's total research funding;

(c) The sponsor's prospective licensing rights cover all technologies developed by a major group or component of the Recipient organization, such as a large laboratory, department or center, or the technologies in question represent a substantial proportion of the anticipated intellectual output of the Recipient's research staff; or

(d) The duration of the proposed agreement is for more than 5 years.

If one or more of these criteria apply, it is more likely that the proposed sponsored research agreement will adversely affect open commercial access, especially for small businesses, to a Recipient's Federally funded research activities and may delay or impede the rapid development and commercialization of technology.

Second, Recipients should be concerned if the scope of the sponsored research agreement is so broad that the subsequent exclusive licensing of technology under the agreement provides a single sponsor with access to a wide array of Recipient research findings and technologies that effectively exclude other organizations from reasonable access to a Recipient's technology. This type of arrangement can also delay commercialization if the sponsor does not have the interest or the capability to develop the technology.

Third, if the sponsor's contribution of funds is to support a Recipient's general operations rather than specifically defined research projects, the Recipient should consider the amount of the sponsor's general funding in relation to funds from other sources when determining what prospective intellectual property rights the sponsor will obtain from the results of the

[9] The regulation, 37 CFR 401.14(F)(4), requires that the following clause be used: "This invention was made with government support under (identify the grant, contract, or cooperative agreement) awarded by (identify the Institute or Center), National Institutes of Health. The government has certain rights in the invention."

[10] The regulations are set forth at 45 CFR Part 74, Subpart D and 45 CFR Part 92.42.

Recipient research. There should be a reasonable relationship between the amount of money contributed by the sponsor and the rights that it is granted both to review and license resulting technology or inventions. Additionally, Recipients should also consider the level of risk that the sponsor will be assuming in order to obtain rights. In general, the greater the restrictions on a sponsor's rights, the higher the sponsor's risk in receiving benefit from its support. As an extreme example, a sponsor should not be able to provide 5 percent of the Recipient's total support, review 100 percent of the Recipient's inventions, and receive rights or a first option to 50 percent of the research results generated by the Recipient. Where general funding is involved, a Recipient may consider a number of alternative actions, including establishing some mechanism to limit the review and licensing rights of the sponsor to a particular segment or percentage of the inventions for a set period of time. For example, the Recipient may require the sponsor to select those research areas on projects to which its general funding rights would attach in advance, thereby freeing up research areas that may be of interest to other commercial entities. Because, by its nature, general funding is less directed and its results more imprecise, Recipients should carefully monitor the impact on open competition and fair access by small business of the sponsor's licensing practices for technology supported by general funding.

Fourth, Recipients should avoid any other unusual practice or stipulation that might generate public concern or undermine rather than serve the public interest.

Other Points for Consideration by Non-Profit Recipients

The following points are to aid non-profit Recipients in administering the Act and in complying with the requirements of NIH funding agreements.

First, Recipients must ensure that the rights to inventions resulting from Federal funding are not assigned without NIH approval. An exception to this is when the assignment is made to an organization which has as one of its primary functions the management of inventions, in which case, the assignee will be subject to the same provisions as the Recipient.

Second, Recipients must share royalties collected on NIH supported inventions with the inventors and the balance of any royalties or income earned, after payment of expenses, including payment to inventors and incidental expenses to the administration of subject inventions, must be utilized for the support of scientific research or education.

Third, Recipients must employ reasonable efforts to attract licensees of subject inventions that are small business firms. Additionally, Recipients must provide a preference to small business firms when licensing a subject invention if Recipients determine that small business firms have plans or proposals for marketing the invention which, if executed, are equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms. However, Recipients must be satisfied that the small business firms have the capability and resources to carry out plans or proposals. The decision whether to give a preference in any specific case is at the discretion of the Recipient. However, since sponsored research agreements typically provide exclusive licenses or options to such rights to the sponsor, Recipients should seriously consider and provide for these issues when negotiating such agreements.

Conclusion

Technology transfer is a vehicle through which the fruits of NIH funded research are transferred to industry to be ultimately developed into preventive, diagnostic and therapeutic products to advance human health. In a dynamic and multinational marketplace, if the United States is to remain a world leader in technological and scientific innovation, both the public and private sectors must work together to foster rapid development and commercialization of useful products to benefit human health, stimulate the economy, and enhance our international competitiveness, while at the same time protecting taxpayers' investment and safeguarding the principles of scientific integrity and academic freedom.

It is in this spirit that the NIH encourages Recipients to address the issues and apply the points for consideration identified in this document when developing sponsored research agreements with commercial entities.

[FR Doc. 94–27576 Filed 11–7–94; 8:45 am]
BILLING CODE 4140–01–P

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting John Fahner-Vihtelic, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext. 285; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Artificial Network For Temporal Processing
Wang, L., Alkon, D.L. (NINDS)
Filed 24 Jun 93
Serial No. 08/082,003

This invention comprises a novel artificial network for learning, recognizing, and generating temporal (time-dependent) spacial processing that offers to improve simulations of natural and biologic systems including human learning processes. Previously developed artificial neural networks have limitations because they often do not recognize sequences for which they have not been pre-programmed and have great difficulty discriminating temporal spacial patterns. Furthermore, they have trouble processing images that are obscured by "noise." This newly developed system overcomes such limitations by incorporating time-delay signal circuits, comparator units, and a parallel array of subneural networks. It is capable of learning temporal-spacial sequences such as speech patterns, robotic and unmanned defense system control commands, and forecasts of multivariate stochastic processes (i.e., weather, stock market, etc.). The system is able to recall an entire sequence after being presented with only a small portion of the sequence, which may be obscured by noise and/or contain blank spacial patterns.

Automated Portrait/Landscape Mode Detection On A Binary Image
Le, D.X.D. (NLM)
Filed 5 Nov 93
Serial No. 08/147,798

A software program that simply, efficiently, and economically detects the orientation of text in a binary image containing non-textual information has been invented. Conventional page orientation systems often have problems determining the orientation (i.e., landscape or portrait) of images with a significant number of non-textual elements (i.e., graphics, etc.). One reason such systems have performance problems is due to their emphasis on global variations in the characteristics of the image. This new apparatus overcomes such limitations by classifying each region of the page as either textual or non-textual according to the characteristics it exhibits. For each of the smaller regions classified as textual, the system then determines its orientation. Thereafter, the system groups the regions into successively larger and larger regions, determining the orientation of the successively larger groups, until it determines the orientation of the overall page.

Lift Task Analyzer
Waters, T.R. (CDC)
Filed 30 Nov 93
Serial No. 08/159,284

Development of an apparatus for automatically determining the overall physical stress required for a particular lifting task is valuable for reducing work-related injuries. Back injuries due to lifting are one of the most common and costly work-related injuries in the U.S. today. There previously has been no method available to quickly and accurately determine if a particular lifting task is likely to result in injury. This newly developed lift task analyzer—which uses National Institute for Occupational Safety and Health (NIOSH) equations to determine the overall physical stress of a particular lifting task—can quickly determine the ability of a lifting task to cause injury, with little error. A single physical measurement is all that is needed to provide enough data for calculating all of the NIOSH equation multipliers.

High Dissociation Constant Fluorescent And NMR Sensitive Calcium Ion Indicators
London, R.E., Levy, L.A., Murphy, E., Gabel, S. (NIEHS)
Filed 30 Dec 93
Serial No. 08/175,590

Development of a novel class of calcium indicators offers to significantly improve understanding of the physiological role of this ion. Calcium is a key element in the regulation of numerous cellular processes, including contraction of muscle and excretion of hormones from gland cells and neurotransmitters from nerve synapses, as well as the regulation of cellular metabolism. Presently used methods for measuring calcium levels in the cytosol are not suitable for measuring calcium levels in organelles within cells. Also, conventional methods and agents do not work well at high levels of calcium ions, which are associated with some pathological conditions. The new class of calcium ion indicators, which are chromophoric or fluorescent dyes, are better able to measure high concentrations of calcium because they have high dissociation constants. Furthermore, because they can be measured by various techniques such as 19F NMR spectroscopy, flow cytometry, and quantitative fluorescence techniques, they are applicable to measuring calcium levels within organelles as well as in cytosol.

Solid-State Fluorescent Tipped Fiber Optic Dosimeter Probe With Isotropic Response For Measuring Light Levels In Tissue And Other Turbid Media
Merberg, G.N., Lilge, L. (FDA)
Filed 25 Jan 94
Serial No. 08/188,325

This invention offers a more efficient and accurate photodynamic therapy delivery system that offers to improve the treatment of certain cancers. Presently available spherical-tipped fiber optic systems have fairly large diameters, making it difficult to accurately deliver the laser light to tumor cells while sparing healthy tissue; such probes tend to be fragile, as well. Although standard fluorescent-tipped fiber optic dosimeter probe designs are much smaller and, thus, offer a size advantage, they cannot deliver as much radiation to the tumor as the spherical-tipped models. However, this new fluorescent-tipped fiber optic system produces a strong but narrow response emission, giving it the advantage of being selective as well as effective. It is also more rugged than earlier fiber optic systems.

Photochemotherapy Dosimeter
Landry, R.J., Matchette, S., Merberg, G.N. (FDA)
Filed 25 Jan 94
Serial No. 08/188,331

A newly developed device for measuring the dosage of photochemotherapy offers to significantly improve the effectiveness of such therapy. In photochemotherapy, a cancer patient is given a photosensitizing dye several days before treatment. Because the dye is retained for longer times in tumor tissue than normal tissue, by the time the optical radiation is administered, a far greater proportion of tumor cells will be killed by the radiation than normal cells; however, successful photochemotherapy is highly dependent upon the ability to deliver a sufficient amount of radiation to the entire tumor volume. Current dose-measuring devices, or dosimeters, have limitations because they do not provide a direct measure of the cumulative dose, or the intensity of the signal they produce for the purpose of measurement is often so low that it cannot be measured accurately. This newly developed dosimeter overcomes such limitations by attaching a chemical cell to the end of a fiber optic cable. This cell contains a photobleachable chemical that accurately measures the amount of energy being directed at the tumor and transmits a signal back through the fiber optic cable to a detection device. This system provides a direct measurement of cumulative dosages of optical radiation, making it easier to more accurately deliver a precise amount of radiation to the target cells.

Isolation Of Cellular Material Under Microscopic Visualization Liotta, L.A., Zhuang, Z., Buck, M.R., Stetler-Stevenson, W.G., Lubensky, I.A., Roth, M.J. (NCI)
Filed 1 Mar 94
Serial No. 08/203,780

A unique method has been developed for identifying and extracting pure cell populations from tissue samples. This method may be particularly useful in the study of tumor cells. Previously, accurate assays of enzyme or MRNA levels of human tumors have been complicated by the fact that homogenates of tumors typically have mixed cell populations (i.e., they contain tumor cells as well as healthy cells). This obscures an interpretation of the pathophysiologic processes that may be occurring in the tissue. This new method for cell extraction allows for visualization of a precise field of cells, which can be labeled for identification by a variety of labeling methods. Only the cells of interest are then circumscribed and automatically extracted. Assays of the extracted cells are more informative because the cell population is homogeneous.

Low Pressure, Low Volume Liquid Pump
Hanus, J.P. (FDA)
Filed 1 Mar 94
Serial No. 08/203,781

A new diaphragm pump may be particularly useful in automatic drug-release testing systems. The presently accepted apparatus for measuring drug release from topical ointments and creams has several limitations and drawbacks because it requires the use of

high pressures, whereas accurate testing must be done under atmospheric pressures. This system also tends to leak and can use only small alliquots. This new diaphragm pump, because it has a minimal internal volume and operates at low pressures, can give much more accurate results and does not absorb any of the material.

Top Down Preprocessor For A Machine Vision System
Vogl, T.P., Blackwell, K.T., Alkon, D.L. (NINDS)
Filed 2 Mar 94
Serial No. 08/204,943

A novel image recognition and classification system has been developed that offers to improve the ability of researchers to develop models of human vision and other neural processes. Despite more than 40 years of research in artificial neural networks, present artificial vision systems are quite crude compared to the visual ability of humans. Most of these systems use a bottom-up approach in which an image (consisting of a collection of pixels) is examined and processed a small area at a time, and the system tries to recognize features within the image by ascertaining the relationship between small groups of pixels. Such systems are plagued by problems with translation, distortion, and noise; however, this new system, which uses a top-down (beginning with examining large areas of an image) hierarchy, provides a biologically realistic processing method for extracting features and more accurately simulates human vision.

Ultrafast Burst Imaging Using Shifting Of Excited Regions
Duyn, J.H. (NCRR)
Filed 4 Mar 94
Serial No. 08/205,434

This invention is a new three-dimensional magnetic resonance imaging device that will allow better imaging of biologic tissue. Conventional BURST technology excites a set of equally spaced, narrow strips in an object and creates an image from a single slice, perpendicular to the direction of the strips. In order to scan multiple slices or for three-dimensional imaging, repeated excitation of the same strips is required. For ultra-fast scanning, repetition times are short compared to longitudinal relaxation times, leading to saturation effects and, thus, inefficiency. In addition, when scanning in two-dimensional mode, the commonly used slice selective RF refocusing pulse also leads to additional saturation. This new device utilizes BURST RF excitation pulses and shifts the excitation region after successive excitation repetitions, thus, minimizing saturation and increasing efficiency while improving the signal to noise ratio. This instrument allows three-dimensional data sets on a human brain scan to be collected within a few seconds using a standard clinical scanner.

Method And System For Multidimensional Localization And Rapid Magnetic Resonance Spectroscopic Imaging
Posse, S., Le Bihan, D. (CC)
Filed 8 Apr 94
Serial No. 08/224,942

A newly developed method and system for multidimensional localization and rapid magnetic resonance spectroscopic imaging allows for quicker, more accurate imaging of metabolites in biologic tissue. Nuclear magnetic resonance (NMR) techniques have long been used to obtain spectroscopic information about substances in order to reveal the substance's chemical composition. More recently, spectroscopic imaging techniques have been developed that combine magnetic resonance imaging (MRI) with NMR spectroscopic techniques, thus providing a spacial image of the chemical composition; however, previously available techniques for making such measurements have been hampered by limitations in prelocalization of samples due to long echo times as well as long data acquisition times. Most of these systems often generate spectral as well as spacial data due to the long echo times, and their localization techniques are not applicable to acquiring multiple-volume data from nuclei that have short T_2 relaxation times. This new system circumvents these limitations by applying pulse sequence to a conventional MRI apparatus, which allows the rapid acquisition of data for generating spectroscopic images and greatly shortens the echo time. Spatial prelocalization of a volume of interest is achieved by providing a presuppression sequence before a stimulated echo (STE) sequence and a suppression sequence before the interval of the STE sequence.

Continuous Positive Airway System
Kolobow, T. (NHLBI)
Filed 22 Apr 94
Serial No. 08/231,718 (CIP of 08/085,948, CIP of 07/878,784, CIP of 07/758,824)

This invention is a novel method and apparatus for greatly improving and sustaining spontaneous breathing in patients with severe respiratory failure. Continuous positive airway pressure (CPAP) is widely used in the treatment of patients with mild respiratory failure. The constant back pressure in CPAP provides the force to expand some diseased parts of the lungs and, thus, improve oxygenation and carbon dioxide removal; however, presently available CPAP systems have limitations when used in patients with more severe respiratory failure who need endotracheal tubes, which have substantial airway resistance as compared to upper airway resistance. This resistance can lead to an increase in the work of breathing and cause fatigue. Too often, a patient with an ETT receiving CPAP treatment is eventually placed on a mechanical ventilator, increasing his or her risk of morbidity and mortality. The peak inspiratory and respiratory air flows in current CPAP systems also is severely limited. This contributes to patient discomfort and often becomes the motivation for switching a patient to a mechanical ventilator. This new CPAP system offers significant improvements over previous systems because it combines a passive CPAP apparatus with an intratracheal pulmonary ventilation (ITPV) system. The ITPV system has exceptionally low extrinsic resistance to air flow and greatly reduces dead-space ventilation. This system will permit a large fraction of the current patient population supported by assisted mechanical ventilation to switch to CPAP or a combination of CPAP and ITPV, significantly reducing the risk of morbidity and mortality.

Variable Axial Aperture Positron Emission Tomography Scanner
Green, M.V., Seidel, J., Gandler, W.R. (CC)
Filed 29 Apr 94
Serial No. 08/235,310

Development of a unique system that can operate as both a scintillation camera and a positron emission tomography (PET) scanner offers to significantly improve the visualization of physiological processes in the human body and other biological systems. Single photon emission computed tomography (SPECT) imaging—which utilizes one or more scintillation cameras rotated around a subject—is used in nuclear medicine facilities worldwide. More recently, an alternative to SPECT imaging has involved the development and use of positron emission tomography (PET) imaging, in which the subject is surrounded by rings of detectors that detect the emission of a pair of gamma rays from a radioisotopic tracer molecule after it is irradiated by positrons. One particular disadvantage associated with conventional PET ring designs is that they cannot image single-photon-emitting tracer compounds such

as those used in SPECT imaging. On the other hand, scintillation cameras are effectively incapable of PET imaging. Previously, there has been no system available capable of both types of imaging. This newly developed system overcomes this problem by using a tiltable pair of scintillation cameras, which can be adjusted to be selectively sensitive to gamma rays of different energies, including those detected in PET imaging.

Dated: October 29, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–27593 Filed 11–7–94; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–3834]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 2, 1994.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System: Modification on the Performance Funding System

Office: Public and Indian Housing

Description of the Need for the Information and its propsed use: The information is used by Public Housing Agencies (PHAs) for inclusion in budget submissions which are reviewed and approved by HUD Field Offices as the basis for obligation operating subsidies. The Information collection is necessary to assure that a PHA is not provided more subsidy than is needed for effective operation of the PHA.

Form Number: None

Respondents: State or Local Governments

Frequency of Submission: Annually and Recordkeeping

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Estimating and Reporting	1,900		1		2		3,800
Recordkeeping	1,900		1		5		9,500

Total Estimated Burden Hours: 13,300

Status: Extension, no changes

Contact: John T. Comerford, HUD, (202) 708–1872; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 2, 1994.

[FR Doc. 94–27643 Filed 11–7–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3755; FR–3622–N–05]

NOFA for Fair Housing Initiatives Program; FY 1994 Competitive Solicitation Correction to Deadline

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability (NOFA)—Correction.

SUMMARY: This notice changes the deadline requirements for the FY 1994 FHIP NOFA published on May 16, 1994 (59 FR 25532).

DATES: The application due date remains the postmark or delivery service receipt date originally specified in the application kit. However, the requirement that applications be received within 7 days after the postmark or delivery service receipt date is removed.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street SW., Washington, D.C. 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Fiscal Year (FY) 1994 Fair Housing Initiatives Program (FHIP) Notice of Funding Availability (NOFA) published on May 16, 1994 (59 FR 25532) contained an application due date that provided:

> Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

Upon further consideration, the Department has determined to remove the "receipt within 7 days" requirement and to permit all applications with a U.S. postmark or a private commercial delivery service receipt, which is dated on or before the application due date, to compete for funding. In making this determination, the Department has taken into account the predicament of applicants who have spent many hours in preparing applications, only to be disqualified, through no fault of their own, because of a third party's failure to make timely delivery. The requirement that all applicants have the same amount of time (up to the postmark date) to prepare their applications is not affected by this determination.

Accordingly, the requirement in the FY 1994 FHIP NOFA, published on May 16, 1994 (59 FR 25532), that applications be received within 7 days after the postmark or delivery service receipt date is removed. Applications will not be disqualified as long as their postmark or delivery service receipt date meets the date originally specified in the application kit.

Dated: October 31, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–27641 Filed 11–7–94; 8:45 am]

BILLING CODE 4210–28–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3720; FR–3617–N–04]

Announcement of Funding Awards for Indian Applicants Under the HOME Program for FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1993 Indian Applicants under the HOME Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to expand the supply of affordable housing.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, U.S. Department of Housing and Urban Development, Room B–133, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755–0032.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The HOME Investment Partnerships Act (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625). The HOME Act creates the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. Regulations for the HOME Investment Partnerships Program are codified at 24 CFR part 92. The requirements of 24 CFR part 92, subpart M (§§ 92.600–92.652) apply specifically to the Indian HOME program.

On March 10, 1994 (59 FR 11424), HUD published a Notice of Funding Availability announcing the availability of $12.75 million in FY 1994 funds for Indian Applicants under the HOME program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFAs. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 94 Indian HOME Program Funding Competition

Cherokee Nation, PO Box 948, Tahlequah, OK 74465, Grant amount: $1,500,000

2. Tohono O'Odham Nation, PO Box 837, Sells, AZ 85634, Grant amount: $1,500,000
3. Choctaw Nation of Oklahoma, Drawer 1210, Durant, OK 74702–1210 , Grant amount: $1,500,000
4. Hughes Tribal Village Council, Box 45029, Hughes, AK 99745, Grant amount: $453,000
5. Blackfeet Tribe, PO Box 640, Browning, MT 59417, Grant amount: $1,500,000
6. Manzanita Band of Mission Indians, PO Box 1302, Boulevard, CA 91905, Grant amount: $130,000
7. Koyukuk Tribal Council, PO Box 109, Koyukuk, AK 99754, Grant amount: $454,000
8. Redding Rancheria, 2000 Rancheria Road, Redding, CA 96001, Grant amount: $701,000
9. Red Lake Band of Chippewa Indians, Red Lake, MN 56671, Grant amount: $500,000
10. The Navajo Nation, PO Box 308, Window Rock, AZ 86515, Grant amount: $1,500,000
11. Seneca Nation of Indians, 1490 Route 438, Irving, NY 14081, Grant amount: $252,000
12. Taos Pueblo, PO Box 1846, Taos, NM 87571, Grant amount: $408,000
13. Muscogee (Creek) Nation, PO Box 580, Okmulgee, OK 74447, Grant amount: $244,000
14. Fort Belknap Comm. Council, RR1, Box 66, Harlem, MT 59526 Grant amount: $400,000
15. Miss. Band of Choctaw Indians, PO Box 6010, Philadelphia, MS 39350, Grant amount: $825,000
16. Salt River Pima Maricopa, Route 1, Box 216, Scottsdale, AZ 85256, Grant amount: $500,000
17. Bois Forte Reservation, PO Box 16, Nett Lake, MN 55772, Grant amount: $341,000

Total: $12,708,000

Dated: November 2, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–27566 Filed 11–7–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Ninth Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth summaries of the United States negotiating positions on agenda items

and resolutions for the ninth regular meeting of the Conference of the Parties (COP9) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Comments have been solicited and public meetings to discuss these negotiating positions have been held.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones or Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420–C, Arlington, VA 22203; telephone 703/358–2093; fax 703/358–2280.

SUPPLEMENTARY INFORMATION:

Background:

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to monitor and control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the treaty. Currently, 124 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties which review its implementation, make provisions enabling the CITES Secretariat (in Switzerland) to carry out its functions, consider amending the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention. The ninth regular meeting of the Conference of the Parties to CITES (COP9) will be held in Fort Lauderdale, Florida, November 7–18, 1994.

A series of notices and public meetings provided the public with an opportunity to participate in the development of the U.S. positions for COP9. A **Federal Register** notice published on July 15, 1993 (58 FR 38112), requested information and comments from the public on animal or plant species the United States might consider as possible amendments to the Appendices. A **Federal Register** notice published on November 18, 1993 (58 FR 60873), requested public comments on possible revisions to the criteria for listing species in the CITES Appendices. A **Federal Register** notice published on January 27, 1994 (59 FR 3832), requested additional comments from the public on animal or plant species the United States was considering submitting as amendments to the Appendices. A **Federal Register** notice published on January 28, 1994 (59 FR 4096): (1) Published the time and place for COP9; (2) announced a public meeting for February 22, 1994, to discuss the 31st meeting of the CITES Standing Committee; (3) detailed the provisional agenda of the COP; and (4) requested information and comments from the public on possible COP9 agenda items and resolutions that the United States might submit. A **Federal Register** notice published on September 1, 1994 (59 FR 45307), announced a public meeting to take place on September 14, 1994. A **Federal Register** notice published on September 6, 1994 (59 FR 46023), set forth summaries of proposed U.S. negotiating positions on species proposals that were submitted by other countries to amend the CITES Appendices and requested public comment on these proposals. A **Federal Register** notice published on September 7, 1994 (59 FR 46266), announced an additional public meeting to take place on September 16, 1994. A **Federal Register** notice published October 4, 1994 (59 FR 50609) set forth summaries of the proposed U.S. negotiating positions on agenda items and resolutions for COP9 and requested public comments on these positions, which were also presented at the September 14 and 16 public meetings. The Fish and Wildlife Service's (Service) regulations governing this public process are found in Title 50 of the Code of Federal Regulations §§ 23.31–23.39.

Negotiating Positions

In this notice, the Service summarizes the United States positions on agenda items and resolutions for COP9 and a summary of written information and comments received in response to the **Federal Register** notice of October 4, 1994. Numerals next to each agenda item correspond to the numbers used in the provisional agenda [COP9 Document 9.1 (revised)] received from the CITES Secretariat. However, documents for several of the agenda items have not been received from the CITES Secretariat. A list of documents received to date and copies are available to the public on request, from the Office of Management Authority.

When information and comments on the agenda items were submitted in writing to the Service or received at the September 14 or 16, 1994 public meetings, they are included with the proposed negotiating position, with a brief discussion. Each proposed position includes a brief rationale explaining the basis of the position. While this notice sets forth the negotiating positions of the United States at COP9, new information that becomes available during discussions at a COP can often lead to modifications in these positions. At COP9, the U.S. delegation will disclose all position changes and the rationale explaining them.

Comments were received from 28 organizations, 1 government, and two private individuals, both in writing and at the public meetings held September 14 and 16, 1994. Comments were received and are summarized from the following governments, organizations and private individuals: Government of Japan, Fisheries Agency (Japan), Africa Resources Trust (ART), State of Alaska Department of Fish and Game (Alaska), the American Orchid Society (AOS), Animal Welfare Institute (AWI), California Cactus Growers Association (CCGA), Center for International Environmental Law (CIEL), Center for Marine Conservation (CMC), Commercial Orchid Growers Guild (COGG), Defenders of Wildlife (DOW), Earth Island Institute (EII), Endangered Species Project (ESP), Environmental Investigation Agency (EIA), Greenpeace, Grigsby Cactus Gardens (Grigsby), Humane Society of the United States (HSUS), the International Association of Fish and Wildlife Agencies (IAFWA), International Wildlife Coalition (IWCo), International Wildlife Management Consortium (IWMC), International Wood Products Association (IHPA), IUCN Marine Turtle Specialist Group (MTSG), Monitor Consortium (Monitor), National Rifle Association (NRA), the Natural Resources Defense Council (NRDC), the Pleurothallid Alliance (PA), Safari Club International (SCI), SMT Guitars, Wildlife Management Institute (WMI), World Wide Fund for Nature, International (WWF), and Mr. John de Kanel and Mr. Gary Lyons.

Negotiating Positions: Summaries

I. Opening Ceremony by the Authorities of the United States of America

The United States is arranging for a suitable ceremony in cooperation with the CITES Secretariat.

II. Welcoming Addresses

The United States is arranging for welcoming addresses from appropriate officials in cooperation with the CITES Secretariat.

III. Adoption of the Rules of Procedure (Doc. 9.3)

Negotiating position: Oppose modifications to the Rules of Procedure that would simplify the procedure for invoking a secret ballot. Support retention of the Rules of Procedure that were in place at COP8 in Kyoto, Japan in 1992.

Information and Comments: Comments were received from DOW,

HSUS, MTSG, and IWCo. Comments were received from DOW and MTSG at the September 16, 1994 public meeting. DOW supports the U.S. position and feels that the role of observers would be negated by a change in the balloting procedure. The MTSG noted that the secret ballot has seldom been used, but when it was used, it had really been needed. DOW urged the United States not to modify its position and to work to convince other Parties to support the U.S. position. It argues that allowing secret ballots so easily would facilitate the practice of announcing one position publicly and vote another position in secret balloting. HSUS supports the U.S. position and maintains that delegates should be accountable to their governments and citizens, that CITES procedures should be conducted in a democratic fashion by majority rule, and that secret ballots are overly time-consuming. IWCo supports the U.S. position, claiming that the proposed revisions to the Rules would permit a regional bloc of countries to dictate to the Convention. IWCo suggests that if the U.S. position to retain the COP8 Rules is not agreed upon, then one viable alternative would be to require at least one Party from each CITES Region to support a secret ballot.

Rationale: The Rules of Procedure must be adopted by the Plenary of the COP at the outset. Any modifications to the Rules of Procedure that were in place at COP8 must be approved by the Parties at the first Plenary session. The only difference between the Rules of Procedure for COP8 and the Provisional Rules of Procedure circulated by the Secretariat is in Rule 15, paragraph 3; that modification was approved by the Standing Committee (for submission to COP9) at its thirty-first meeting in Geneva, held March 21–25, 1994. Rule 15, paragraph 3, refers to secret ballots. According to the Rules of Procedure adopted at COP8, when a delegation proposes that a vote be taken by secret ballot, an open vote is required to approve this proposal; a majority of all Parties voting must approve a secret ballot before it is implemented. The Provisional Rules of Procedure recommended by the Standing Committee, amended at the suggestion of the observer from Zimbabwe at that meeting, require that only six parties (the proposer and five seconds) request a secret ballot for it to be implemented for a particular vote.

At the Standing Committee meeting, the U.S. delegation opposed modifying the Rules of Procedure. The COP9 position of the United States remains in opposition to this modification of the Rules of Procedure, which operated effectively at both COP7 and COP8. In numerous international fora (e.g., GATT, UNCED), it has been the position of the United States to promote openness in the dealings of intergovernmental organizations. In the U.S. view, it would be highly unusual in terms of international treaty practice for secret balloting, other than for the election of officers. The United States believes that since a delegation at a COP is accountable to its government, it should not need to vote in secret. The United States is also very concerned that making secret ballots too easy will unnecessarily delay the work of the COP. The United States also believes that it is inappropriate for the minority (possibly only six countries) to dictate to the majority how votes should proceed. The United States believes that a rule allowing a few countries to determine the use of the secret ballot could lead to excessive use of this option, as well as unnecessary dissension and ill will among countries. Secret ballots are extremely slow and time consuming. Regardless of how few or many secret ballots are taken at the COP, however, all U.S. positions and votes on issues will be publicly disclosed.

IV. Election of Chair and Vice-Chair of the Meeting and of Committees I and II and of the Budget Committee (No Documents Will Be Received)

Negotiating position: Support election of a Conference Chair from the United States, and highly qualified Committee and Vice Chairs representing the geographic diversity of CITES.

Information and Comments: Comments were received from HSUS, which supports the U.S. position.

Rationale: The Chair of the CITES Standing Committee (New Zealand) will serve as temporary Chair of the Conference until a permanent Conference Chair is elected. It is traditional for the host country to provide the Conference Chair, and the United States will propose a person with substantial executive skills and international negotiating experience to be nominated as Chair. This person, if elected by the parties, will serve as Presiding Officer of the Conference and also of the Conference Bureau, the executive body which manages the business of the Conference; other members of the Bureau include the Committee Chairs (discussed below), the nine members of the Standing Committee (see Agenda Item IX), and the Secretariat.

The major technical work of CITES is done in the Committees, and thus Committee chairs must have great technical knowledge and skill. In addition, CITES benefits from active participation and leadership of representatives of every region of the world. The United States will support election of Committee Chairs and Vice Chairs of the Conference having requisite technical knowledge and skills and also reflecting the geographic and cultural diversity of CITES. The United States is now consulting with the Secretariat and the Standing Committee regarding suitable candidates.

V. Adoption of the Agenda and Working Programme (Docs. 9.1, 9.2, 9.21, 9.2.2)

Negotiating Position: Support adoption of an agenda and working program that guarantee a smoothly operating meeting that addresses all species and implementation issues.

Information and Comments: Comments were received from HSUS, which supports the U.S. position.

Rationale: The U.S. nominee to serve as Conference Chair, if accepted by the Parties, will be responsible for management of the overall agenda, in consultation with the Bureau.

VI. Establishment of the Credentials Committee and Committees I and II (No Document Will Be Received From the CITES Secretariat).

Negotiating Position: Support the establishment of the Credentials Committee and Committees I and II.

Information and Comments: Comments were received from HSUS, which support the U.S. position.

Rationale: Establishment of the Credentials Committee is a *pro forma* matter. The Credentials Committee approves the credentials of delegates to the COP, by confirming that they are official representatives of their government, thereby affording them the right to vote in Committee and Plenary sessions. The United States supports the establishment of Committees I and II, provided most participating Parties have been able to send at least two delegates, or that the rules governing debate of the Committees ensure that most delegations will have an opportunity to debate recommendations before a final decision is made.

VII. Report of the Credentials Committee (No Document Will Be Received)

Negotiating position: Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that are Parties to CITES. Representatives whose credentials are not in order should be afforded observer status as provided for under Article XI. If credentials have been delayed.

representatives should be allowed to vote on a provisional basis. A liberal interpretation of the Rules of Procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate.

Information and Comments: HSUS supports the general comments of the Service on this issue.

Rationale: Adoption of the report is generally *pro forma*. Exclusion of Party representatives whose credentials are not fully in order could undermine essential cooperation among Parties.

VIII. Admission of Observers (No Document Will Be Received Before the COP)

Negotiating Position: Support admission to the meeting of all technically qualified national and international non-governmental organizations and support their full participation at COP9.

Information and Comments: Comments were received from HSUS and DOW. HSUS supports the Service's general comments on this issue. DOW supports the U.S. position to support the admission of all technically qualified non-governmental organizations and to oppose unreasonable limitations on the full participation of such groups during COP9.

Rationale: National and international non-governmental organizations representing a broad range of viewpoints and perspectives play an important role in CITES activities and have much to offer to the debates and negotiations at a COP. Their participation is specifically provided by Article XI of the Convention. The United States supports the opportunity for all technically qualified observers to fully participate at COPs. Each Party government approves its own national observer organizations, while the Secretariat approves international organizations. The Office of Management Authority approved the attendance of sixty-five U.S. observer organizations.

IX. Matters Related To the Standing Committee

This agenda item consists of three subitems:

1. Report of the Chairman (Doc 9.5)

Negotiating Position: The United States strongly supports the active role which the current Standing Committee, under the leadership of New Zealand, has played in carrying out the many functions given to it by resolutions adopted by Conferences of the Parties. This includes the review of compliance with these resolutions by the Parties and making decisions for appropriate action when Parties are not in compliance.

Information and Comments: Comments were received from HSUS, which supports the U.S. position regarding the current chair of the Standing Committee, who it feels has opened the Committee up to NGOs. HSUS urges the United States to oppose any attempt to exclude NGOs from making presentations at future Standing Committee meetings.

2. Regional Representation on the Standing Committee (Doc. 9.7)

Negotiating Position: Support an increase in Standing Committee membership if budgetary implications can be resolved.

Information and Comments: Comments were received from HSUS. HSUS opposes increasing the number of representatives to the Standing Committee because of the added expense and because it feels the addition of extra representatives would slow the deliberations of the Committee. HSUS does not believe that the representatives fully consult with the countries they theoretically represent.

Rationale: The Standing Committee is currently composed of six Regional voting representatives of North America (Canada), Central and South America and the Caribbean (Trinidad and Tobago, the Vice Chair), Asia (Thailand), Oceania (New Zealand, the Chair), Africa (Senegal), and Europe (Sweden). There are also three *ex officio*, nonvoting members: Switzerland (depositary country), Japan (past host country), and the United States (current host country). Each CITES Region currently has one representative on the Standing Committee, regardless of how large or small the number of Parties (Africa has 43 CITES parties, for example, while North America has 3 Parties and Oceania 4). A proposal submitted by Malawi would increase the number of Regional representatives from Regions having larger numbers of Parties. The United States will consider support for such a proposal only after full consideration by the Budget Committee of any financial effects.

3. Election of New Members and Alternate Regional Members

Negotiating Position: Encourage membership which will continue the active role of the Standing Committee.

Information and Comment: Comments were received from HSUS which supports the general comments of the Service on the election of new members of the Standing Committee.

Rationale: The Regional representatives of North America, Europe, and Oceania are open for review by their respective Regions at COP9. The United States, as host of COP9, will continue on the Standing Committee as past host country until COP10. A new Chair will be selected by the new Standing Committee during a meeting to be held at the close of COP9; while the United States will not have a vote, the U.S. position is to encourage selection of a Chair with a strong commitment to a proactive Standing Committee role in the management of CITES affairs, as New Zealand has done during the past two and one half years.

X. Report of the Secretariat: the Report Has Not Been Received

Negotiating Position: When received, the Service will carefully review issues pertaining to: success of procedures for Parties to set budgetary and work priorities; setting of new short-term and long-term objectives for the Secretariat; evaluation of the performance of the Secretariat; and progress in assisting Parties to more forcefully and effectively implement the Convention.

Information and Comments: Comments were received from HSUS which supports the Service's general comments on this issue.

Rationale: The biennial report provides the major way for the Secretariat, and the Secretary General, to report priorities, accomplishments, and problems to the Parties. These are critical management issues facing CITES which need to be addressed in the Secretariat's report.

XI. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties

1. Financial Report for 1992–1993

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time. The United States continues to advocate fiscal responsibility and accountability.

2. Anticipated expenditures for 1994 and 1995

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time. The United States continues to advocate fiscal responsibility and accountability.

3. Budget for 1996–1998 and Medium-Term Plan for 1996–2000 (Doc. 9.10)

Negotiating Position: Oppose any substantial increase in the Secretariat's budget representing a significant increase in its work plan. Support

budget increases requested by the Secretariat in cases where the growing membership is placing increasing burdens on staff, without any commitment to an increased U.S. contribution Support an evaluation of priorities and possible reprogramming of currently funded budget items into underfunded or unfunded areas of higher priority. Review current expenditures and proposed budget items (both base and increases) in the context of priorities for implementation and enforcement of the Convention worldwide.

Information and Comments: Comments were received from HSUS, which supports the U.S. position of evaluating priorities and possible reprogramming of budget items. HSUS calls for a 75% reduction in the Nomenclature Committee budget and application of the savings to enforcement efforts. The United States agrees that the budget proposed for nomenclature appears somewhat excessive, and should be reviewed in the context of priorities for implementation of the Convention. HSUS calls for holding Plants and Animals Committee meetings in a centralized location to hold down costs. HSUS recommends that if a Party wishes to host a Committee meeting, it should pay the difference between the costs of holding the meeting at the distant location or holding it in the centralized location (which the United States presumes to mean Geneva). The United States considers this a useful recommendation, but believes that only travel costs of committee members should be covered by the host government.

Rationale: The United States cannot at present commit to a larger contribution to the CITES budget. The United States is the largest single contributor; under the United Nations scale, the United States is asked to provide 25 percent of the annual operating budget. In fiscal year 1994, the Department of State allocated approximately $1 million of the Congressional foreign aid appropriation to support CITES. However, the United States recognizes the heavier workload being imposed on the Secretariat, Standing Committee, and both the Animals and Plants Committees. The United States looks forward to a full review of current expenditures and proposed budget items (both base and increases) in the context of priorities for implementation and enforcement of the Convention worldwide.

4. External Funding

Negotiating Position: No document has been received from the CITES Secretariat; no specific position is possible at this time. The United States continues to strongly encourage national and international non-governmental organizations, intergovernmental organizations, and other governments, to support these projects.

Information and Comments: No comments were received.

Rationale: External funding refers to the financial support by Party governments and non-governmental organizations for projects that have been approved by the Standing Committee. The CITES Parties have established a process whereby the Standing Committee approves projects and approves donors, to avoid even the appearance of a conflict of interest. The Secretariat's report on this issue is expected to summarize approved donors, approved projects, projects that have been funded, and approved projects that are awaiting funding. The Service, the Department of State, and the National Marine Fisheries Service have made substantial contributions to externally funded projects, including travel of delegates from developing countries to COPs, support for committee meetings, facilitating a meeting of the Working Group on the Transport of Live Specimens, biological studies of significantly traded species, review of national laws for the implementation of the Convention, numerous enforcement-related projects, and other similar projects.

XII. Committee Reports and Recommendations

1. Animals Committee (Doc. 9.13)

Negotiating Position: The United States supports the active role of the Animals Committee in scientific and management issues pertaining to animal species listed in the CITES Appendices. Encourage membership which will continue the active role of the Animals Committee, and selection of a Chair with a strong commitment to a proactive Animals Committee.

Information and Comments: Comments were received from HSUS, which argues that the Animals Committee spends too much time on enforcement issues, which HSUS believes would be better dealt with by a special enforcement committee. According to HSUS, the Animals Committee should instead focus more intently on the biological status of species.

Rationale: The Animals Committee report may contain information or recommendations dealing with Appendix II species subject to significant trade, marking techniques, crocodilian tagging, sea turtle ranching, care for and reintroduction of seized live animals, and various other issues. The United States has actively participated in the work of the Animals Committee since its establishment at COP6, and will continue to be an active participant in Animals Committee functions. The United States is satisfied with the current jurisdiction and work priorities of the Animals Committee. The United States is supporting the establishment of a Law Enforcement Working Group to deal with specific implementation issues related to enforcement.

Regional Representation on the Animals Committee (Doc. 9.49)

Negotiating Position: Support the draft resolution submitted by Kenya proposing that the regions of Africa, South and Central America and the Caribbean, and Asia provide two representatives each to the Animals Committee, if the necessary financial support is provided by the Secretariat through the Secretariat's Budget. The United States notes that Europe, with a large number of Parties as well, would also have two representatives.

Information and Comments: No comments were received.

Rationale: The Animals Committee is currently composed of individuals representing the six CITES geographic regions: North America, Central and South America and the Caribbean, Asia, Oceania, Africa, and Europe. Each CITES Region currently has one representative on the Animals Committee. The Regional representatives are selected by the Party governments at their respective regional caucuses during the COP. A new Chair will be selected by the new Animals Committee, most likely during a meeting to be held at the close of COP9.

2. Plants Committee (Doc. 9.14)

Negotiating Position: The United States supports the continued activities of the Plants Committee to improve the effectiveness of CITES for plants, with a focus on the following: publication of checklists and identification guides; significant trade in orchids, succulents, and other species; review of the timber trade; and trade in artificially propagated plants. Encourage membership which will continue the active role of the Plants Committee, and selection of a Chair with a strong commitment to a proactive Plants Committee.

Information and Comments: No comments were received.

Rationale: The Plants Committee is currently composed of individuals representing the six CITES geographic regions: North America, Central and South America and the Caribbean, Asia, Oceania, Africa, and Europe. Each CITES Region currently has one representative on the Plants Committee. Dr. Bruce MacBryde of the Service's Office of Scientific Authority serves as Vice-Chair of the Plants Committee (representing North America). The Regional representatives are selected by the Party governments at their respective regional caucuses, at the COP. A Chair will be selected by the new Plants Committee, most likely during a meeting to be held at the close of COP9.

3. Identification Manual Committee (No Document Has Been Received)

Negotiating Position: Continue to support the work of the Identification Manual Committee and development of animal and plant identification manuals for use by port and border enforcement officers, in providing a standard of reference for the identification of CITES species. Consider the budget of the Identification Manual Committee in the context of available resources and priorities.

Information and Comments: Comments were received from DOW. DOW concurs with the U.S. support of the Identification Manual Committee and the development of plant and animal identification manuals for use by port and border enforcement officers. DOW believes it would aid the monitoring of imports by decreasing limitations in identifying species.

Rationale: The enforcement officers of the Parties must be equipped with guides which are accurate, realistic, and helpful in the identification of the many CITES species and products found in trade throughout the world.

4. Nomenclature Committee (Doc. 9.16)

Negotiating Position: Encourage the development and adoption of checklists for all taxa, within budgetary limits and priorities to be decided upon by the Parties. Support revisions of existing checklists for fauna prior to development of new ones. Consider the budget of the Nomenclature Committee in the context of available resources and priorities for the implementation and enforcement of the Convention worldwide. Oppose use of CITES funds for the start of a lizard checklist before other tasks are complete, and do not support proposed name changes for U.S. freshwater mussels. Ensure that the language of the resolution is consistent with comparable recommendations in whatever listing criteria resolution is adopted by the Parties.

Information and Comments: No comments were received.

Rationale: Because of the expense in developing checklists for taxa, the United States supports recognition of existing checklists for remaining taxa when suitable, and greater use of external funding when possible. Implementation of the Convention is strengthened by the use of uniform names of listed species.

XIII. Evolution of the Convention

1. Strategic Plan of the Secretariat

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time. The earlier version discussed at the last Standing Committee meeting had many elements the United States could support.

Information and Comments: No comments were received.

Rationale: The Secretariat submitted a provisional discussion document at the 31st meeting of the Standing Committee, discussing a long-term strategic plan for activities of the Secretariat. The United States considers such long-term management planning to be in the best interest of increasing the implementation, enforcement, and effectiveness of the Convention.

2. How to Improve the Effectiveness of the Convention

Negotiating Position: An informal document has been reviewed, but the revised document has not been received from Canada or the Secretariat; no final position is possible at this time.

Information and Comments: Comments were received from HSUS and SCI. HSUS supports the Service's general comments on this issue. SCI calls for a complete reevaluation of the basic concepts of CITES. It argues that the listing process is too vague and becomes too political. It further maintains that there has been the development of the precautionary principle which it believes is not in the treaty. It claims that the process as it stands has become abusive. It urges the United States to support an active, cooperative process to reform the mechanisms of CITES in the direction of cooperation between range states and importing states and to recognize the conservation role of tourist safari hunting and other forms of sustainable use.

Rationale: This agenda item was suggested by the delegate from Canada at the March 1994 Standing Committee meeting; the Standing Committee agreed that a review of the general evolution and implementation of CITES should be done by an independent body, and that a project proposal for this review should be developed by the Secretariat. The main concerns of the United States are: whether or not funding will be available for such a project; that such a project not impair the ability of other functions in the Secretariat budget to receive necessary and possibly higher priority funding; and that emphasis should be placed on how to improve the effectiveness of the Convention, including its enforcement and implementation, rather than in a costly study of whether or not the Convention is effective.

XIV. Interpretation and Implementation of the Convention

1. Review of the Resolutions of the Conference of the Parties (Doc. 9.19)

Negotiating Position: Support the effort begun by the Secretariat immediately following COP8, at the direction of the Standing Committee, to review all of the resolutions of the Conference of the Parties with the goal of assisting Parties in the effective utilization of the resolutions, in order to more effectively implement the Convention, by: (1) Deleting resolutions that have been superseded or whose purpose has been accomplished; and (2) consolidating resolutions that deal with the same subject.

Information and Comments: Comments were received from DOW, HSUS, and SCI. DOW commented at the September 16, 1994 public meeting that it was wise to consolidate and wise to be cautious in making deletions and called for all previous resolutions concerning ivory to be retained (see discussion under agenda item 1a). The United States notes that those resolutions or portions of resolutions proposed for deletion that pertain to the ivory trade have been superseded by the inclusion of all African elephant populations in CITES Appendix I. However, many parts of the resolutions have continuing validity as to the legality of imports and legal status of certain specimens. Additionally, important policies adopted by the Parties through these resolutions should be revived if any African elephant populations are transferred to Appendix II.

HSUS supports the deletion and consolidation of the resolutions that have been superseded or accomplished in general. SCI urged that care be taken not to change basic concepts of

resolutions when consolidating overlapping resolutions, eliminating duplications, and clarifying cross-referencing. The Service agrees, and has worked consistently within the Standing Committee to ensure that consolidations do not in any way change basic concepts or the sense of resolutions.

Rationale: At every Standing Committee meeting since COP8, the United States delegation has strongly urged (and the Committee has adopted this recommendation of the United States) that any consolidation of resolutions retain the text of the original, including the preamble, so as to: (1) Assist the Parties, while retaining the original intent of the resolution; and (2) reduce unnecessary or unproductive debate at COP9 on "old" issues. Therefore, the United States supports deleting only out-of-date resolutions that are truly non-controversial, and retaining the text of the original for any consolidations. The Standing Committee reiterated its support for this approach at its March 1994 meeting. The United States supports an expedited approval of these consolidations in Plenary Session at COP9, which will only be possible if the original text of resolutions (preamble and operative paragraphs) are retained, so that any consolidations will be structural and not substantive.

(a) Deletion of Resolutions that are out of date (Doc. 9.19.1). Negotiating Position: Support the deletion of resolutions that are out of date, if they have been superseded by other resolutions or have been overtaken by events. However, they contain valuable historical information and should be available in some form should trade be reactivated for certain species. Essentially support the deletion of all resolutions proposed by the Secretariat and circulated to the Parties, with the following exceptions: Conf. 2.8, 3.13, and those relating to certain parts and derivatives of plants—Conf. 2.18, 4.24, 6.18, and 8.17 (b) and (c). Those resolutions or portions thereof proposed for deletion that pertain to the ivory trade have been superseded by the inclusion of all African elephant populations in CITES Appendix I. However, many parts of the resolutions have continuing validity as to the legality of imports and legal status of certain specimens. Additionally, important policies adopted by the Parties through these resolutions should be revived if any African elephant populations are transferred to Appendix II.

Information and Comments: Comments were received from EIA, AWI, DOW, HSUS, and IWCo. EIA, at the September 14, 1994 public meeting, urged that the following resolutions not be consolidated or deleted: Conf. 1.6, ivory control resolutions, and the European Union resolution. At the September 16, 1994 public meeting AWI urged that nothing be deleted that may be useful in the future. DOW and IWCo expressed concerns about the deletion of paragraph 5 of Resolution Conf. 1.6, adopted for the purpose of limiting the pet trade in wild animals to those bred in captivity. They disagree with the explanation provided by the Secretariat that this has virtually been achieved. DOW urges the United States to reconsider its approval of this deletion and also asks it to review the deletion of Resolution Conf. 6.5 on CITES implementation in the EC. It disagrees with the Secretariat's sentiments that the recommendation in Conf. 6.5 calling for the EC to monitor the movement of CITES specimens between Member States is no longer necessary. HSUS urges the U.S. to oppose the deletion of the following Resolutions: Conf. 1.6, paragraph 5, on the limitation of keeping pets to those that can be bred in captivity; Conf. 2.8 and 3.13, regarding the trade in whale products (this supports the U.S. position); Conf. 6.5 on CITES Implementation in the EC; and Conf. 5.12, 6.11 through 6.16, and 7.8 on the ivory trade from African elephants. IWCo also opposes the deletion of any of the resolutions relating to control of the ivory trade.

The United States agrees that no resolution that remains useful or operative should be deleted. The United States agrees that problems remain with the implementation of CITES in the European Union, but also agrees with the Secretariat that the recommendations of this resolution have been fulfilled. The United States notes that those resolutions or portions of resolutions proposed for deletion that pertain to the ivory trade have been superseded by the inclusion in Appendix I of the African elephant, but recognizes the merit of retaining them for future application to any populations that may be transferred to Appendix II.

The United States agrees with the Secretariat that Resolution Conf. 1.6 paragraph 5 can be repealed because: it has become outdated; for many species wild caught animals already have been replaced by captive-bred specimens, while for others removal from the wild for the pet trade may indeed be sustainable; and it provides no direction for implementation by the Parties. The United States is not opposed to removal of animals from the wild for the pet trade, if such removal is part of an effective and enforced scientifically-based sustainable-use management plan.

IWCo opposes the deletion of the following additional resolutions proposed for deletion by the Secretariat: Conf. 2.23, 3.9, 3.20, and 6.8.

Rationale: Certain other resolutions on plants remain pertinent unless they are superseded by new resolutions coming from COP9, e.g., Conf. 5.15 in relation to Doc. 9.30 on nursery registration. Technical review of Doc. 9.19.1 is continuing and the United States may offer further comment on the affected resolutions before or during the COP.

The United States supports deletions of resolutions that are out of date or no longer relevant. However, recent discussions in the International Whaling Commission (IWC) highlight the fact that illegal trade in whale parts and products continues, in spite of the IWC's moratorium on commercial whaling. The United States has requested that this item be discussed at COP9 (see agenda item 15). The IWC has not yet completed an observation, inspection and enforcement program which would certify that the products of any commercial whaling which occurs in the future are taken in compliance with IWC regulations. Thus, these resolutions (Conf. 2.8 and 3.13) are neither out of date, nor have they been superseded.

The United States opposes deletion of certain aspects pertaining to plants in Conf. 2.18, 4.24, 6.18, and 8.17(b) and 8.17(c). These portions provide an important legal basis for the exemption from CITES provisions of certain specified parts and derivatives of certain plants, e.g., the cut flowers of artificially propagated Appendix I hybrids and the flasked seedlings of all artificially propagated orchids. The United States considers these paragraphs to articulate an important legal rationale. The United States supports these exemptions.

Future germane proposals on taxa for Appendix I simply can be directed by Conf. 8.17(b) and 8.17(c), without subsequent proposals on the standard exemptions. Future proposals to uplist orchid taxa thus would be routinely guided by Conf. 8.17(c) and their flasked seedlings would be exempt. A similar process has been in effect for the proposals on Appendix II plant taxa, where routinely certain parts or derivatives are standard exclusions, as specified through Conf. 4.24 (e.g., for tissue cultures) and Conf. 6.18 (e.g., for flasked seedling cultures).

(b) Consolidation of valid resolutions. Negotiating Position: No document has been received from the CITES

Secretariat. However, documents have been received at several Standing Committee meetings. The United States essentially supports those consolidations prepared thus far by the Secretariat.

Information and Comments: EIA, at the September 14, 1994, public meeting, urged that the ivory control resolutions not be consolidated (see discussion above, of resolutions to be deleted or repealed).

Rationale: Proposed consolidations have been discussed at Standing Committee meetings and approved for transmission to the Parties on the following issues (final text has not been received from the Secretariat, however): Transport of live specimens (consolidate Conf. 3.16, 4.20, 5.18, 7.13, and 8.12); Disposal of illegally traded specimens (consolidate Conf. 2.15, 3.9, 3.14, 4.17, 4.18, 5.14, and 7.6); Trade in elephant ivory (consolidate Conf. 3.12, 6.12, 6.14, 6.15, 6.16, and 7.8); Annual reports and trade monitoring (consolidate Conf. 2.16, 3.10, 5.5, 5.6, 5.14, and 8.7); Trade in readily recognizable parts and derivatives (consolidate Conf. 4.8, 5.9, 5.22, and 6.22); Permits and certificates (consolidate Conf. 3.6, 3.7, 4.9, 4.16, 5.7, 5.8, 5.15, 6.6, 8.5); Trade in plants (12 prior resolutions: consolidate Conf. 2.13, 5.14, 5.15, 8.17, propose to repeal all or part of Conf. 2.18, 4.24, 5.14, 6.18, and 6.20, and deal with Conf. 2.14, 4.16, and parts of 5.14, 8.18, 8.19 in a separate consolidation); Trade with non-Parties and reserving Parties (consolidate Conf. 3.8, 8.8); and Transit and transhipment (consolidate Conf. 4.10, 7.4). The United States finds these proposals to be a diligent consolidation of a complex array of resolutions dealing with the same topic, subject to final review of the Secretariat's submission to the Conference of the Parties.

2. Establishment of a List of the Other Decisions of the Conference of the Parties

Negotiating Position: No document has been received from the CITES Secretariat. Support ongoing Standing Committee and Secretariat efforts to differentiate between Resolutions of the Conference of the Parties which provide guidance and interpretation of the Convention, or call for continuing activities of indefinite duration, and decisions of the COP that direct the Secretariat or permanent committees to perform certain specific activities of limited duration.

Information and Comments: Comments were received from HSUS, which supports the Service's general comments on this issue.

Rationale: The Standing Committee has recommended that decisions of the Parties at the COP be distributed in a manner similar to that for resolutions. The United States supports this procedure, utilizing guidelines to be adopted by the COP, that have been approved by the Standing Committee. Often, recommendations to the Secretariat or permanent committees are included in resolutions, when these recommendations are relevant for a particular committee only, or for a short time period between two COPs only. The United States supports separating these specific and/or short-term decisions from resolutions, wherein resolutions should refer to recommendations for implementation of the Convention, and interpretations of the Convention.

3. Report on National Reports Under Article VIII, Paragraph 7, of the Convention

Negotiating Positions: No document has been received from the CITES Secretariat. Support efforts to encourage all Parties to submit annual reports for all species of flora and fauna, as required by the treaty. Support efforts whereby proposals for transfer of certain species from Appendix I to II with an export quota or pursuant to ranching only be considered for Parties that are current with their annual report submissions.

Information and Comments: Comments were received from HSUS. HSUS urges that proposals to transfer species from Appendix I to II with an export quota or pursuant to ranching, should be considered only when submitted by Parties that are current with their annual report submissions. It also supports measures to encourage Parties to submit their annual report on time.

Rationale: Each Party is required by the Convention to submit an annual report containing a summary of the permits it has granted, and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. Accurate report data are essential to measure the impact of international trade on species, and can be a useful enforcement tool.

4. Review of Alleged Infractions and Other Problems of Implementation of the Convention (Doc. 9.22)

Negotiating Position: Support the Secretariat's review of alleged infractions by the Parties, and necessary and appropriate recommendations to obtain wider compliance with the terms of the Convention. Support an open discussion at COP9 of major infractions, and a greater emphasis by the Parties on the enforcement of the laws and regulations implementing the Convention.

Information and Comments: Comments were received from DOW, HSUS, MTSG, and Monitor. At the September 14, 1994 public meeting Monitor commented that the United States should make the Infractions Report a high priority issue. DOW commented at the same public meeting that the Infractions Report should be linked to a follow-up process and that a Law Enforcement Network should review the report and assist countries with problems on a regular basis. MTSG commented that infractions are not receiving the attention they warrant and are being discussed less now than in the past. DOW supports expansion of the Infractions Report. It recommends that the Secretariat be directed, along with the Standing Committee, to undertake a more extensive review process and identify species, countries, or areas in which infractions and/or lack of legislation are so great they create a presumption of non-compliance. The Service considers this to be a useful suggestion that it will pursue. HSUS supports the expanded report and urges that it be a sign of a new emphasis on the importance of proper implementation and enforcement of the Convention. The United States always gives a high degree of attention and priority to the discussions of the Infractions Report at COP's, and will continue to do so. The United States agrees that a Law Enforcement Network (see agenda item 7, below) could assist Parties with dealing with these infractions, preventing their occurrence in the future, and in improving compliance with requirements of the Convention.

Rationale: Article XIII of the Convention provides for COP review of alleged infractions. The Secretariat prepares an Infractions Report for each COP, which details instances that the Convention is not being effectively implemented, or where trade is adversely affecting a species. The Infractions Report contains only infractions which were reported to the Secretariat. The first draft of the Infractions Report contained numerous such alleged infractions. The United States commented on the draft Infractions Report. A review of the alleged infractions indicates a great difference in the depth of the reporting on infractions over previous reports. The United States considers this to be an excellent, well- researched and well-prepared Secretariat document. A large number of infractions are caused by lack

of training, lack of personnel, or lack of knowledge on the workings of CITES. The majority of the alleged infractions should be a major cause of concern to the Parties.

5. Implementation of the Convention in the European Community

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time.

Information and Comments: No comments were received.

6. National Laws for Implementation of the Convention (Doc. 9.24)

Negotiating Positions: Support adoption of the report on this topic, submitted by the Secretariat, including the recommendations contained therein. The United States supports the draft Decision of the Conference of the Parties submitted by the Secretariat in Doc. 9.24 concerning recommendations to the Parties on this issue.

Information and Comments: Comments were received from HSUS, which strongly supports the document's recommendation that strong action be taken against Parties in category 4 in the document, including trade restrictions if necessary to encourage CITES implementation.

Rationale: The United States was strongly supportive at COP8 of a review of national laws for the implementation of the Convention; such laws are required by Article VIII of the Convention. The United States believes that the Convention's effectiveness is undermined when Party states either do not have national laws implementing the Convention, or have inadequate legislation; this includes laws and regulations that authorize seizure and/or forfeiture of specimens imported or exported in contravention of the Convention, and laws and regulations that provide appropriate penalties for such violations.

The Secretariat contracted (with funding from the United States), as called for in Resolution Conf. 8.4, for analyses of national legislation to implement CITES. The first phase of that project involved analyses of legislation in 81 Parties, that had been selected based on high levels of trade in CITES-listed species. The Secretariat has developed a document that categorizes CITES-implementing legislation in those 81 Parties, based on the extent to which their national legislation provides for the implementation of the Convention. The United States supports recommendations in the document for assistance to the Parties in developing national legislation. The United States also supports the draft Decision of the Conference of the Parties (a new format for COP9), submitted by the Secretariat in Doc. 9.24 concerning recommendations to the Parties on this issue.

7. Enforcement of the Convention (Doc. 9.25 and 9.25.1)

Negotiating Position: Support establishment of a Law Enforcement Network.

Information and Comments: Comments were received from DOW, EII, ESP, HSUS, IWCo, SCI, and SMT Guitars. ESP commented at the September 14, 1994 public meeting in support of the U.S. position. EII supports the establishment of a Law Enforcement Network, and advocates supporting the proposals submitted by the United Kingdom and Ghana and working to achieve the strongest enforcement provisions possible to ensure that this issue receives top priority at the COP. IWCo supports the U.S. position, and prefers the Ghana to the United Kingdom resolution. DOW also strongly supports the establishment of a Law Enforcement Network and the proposals submitted by the United Kingdom and Ghana. It argued that the proposal from Ghana could be strengthened by additional amendments that would (1) establish a permanent consultative group or committee on law enforcement; (2) establish an international law enforcement network and a series of regional law enforcement agreements and networks; (3) extend enforcement efforts by CITES to other international government and nongovernment entities for assistance; and (4) provide for expanded law enforcement initiatives in the budget adopted at the each COP. EII further requests that the United States seek internal and external financial support for enforcement activities both within the United States and in countries which lack the technical and financial means to fully implement the Convention. HSUS considers enforcement to be one of the most important issues to be discussed at COP9, and recommends that the United States support the Ghana resolution. The United States does indeed consider effective enforcement of the provisions of the Convention to be a critical issue, and supports establishment of a Law Enforcement Network. The Service continues to review strengthening amendments to the draft Ghana resolution submitted by HSUS, which appear constructive. DOW called for CITES to study the impact of trade agreements such as NAFTA on enforcement. SMT Guitars said that there should be ways to get education about CITES out to the people. SCI argues that while it supports strong enforcement of CITES, care must be taken not to institutionalize a blanket negative attitude about wildlife trade.

Rationale: The Secretariat's Notification to the Parties number 776 asked the Parties for their comments on a proposal for establishment of a Law Enforcement Network. The United States supported establishment of such a network at that time. The United States will continue its strong support for the provision of law enforcement training to assist Parties in implementing and enforcing the Convention.

Although the Law Enforcement Network was not adopted by the Standing Committee, it was agreed that the Parties should discuss the issue at the COP. The United States considers effective enforcement of the Convention to be a critical element that is lacking for many countries, for a number of reasons, including: Lack of training, inadequate legislation or regulations, lack of funding, lack of infrastructure, and inadequate communications and networking with other countries and entities. The United States believes that establishment of a Law Enforcement Network, comparable to other committees or working groups established by the Parties, will begin the process of alleviating these deficiencies.

8. Trade in Hunting Trophies of Species Listed in Appendix I (Doc. 9.50)

Negotiating Position: The United States continues to support implementation of Resolution Conf. 2.11 by all Parties, coupled with recognition of the need for close consultation with other interested States and of any Party's right under Article XIV of the treaty to implement stricter domestic measures. The United States believes that its Scientific Authority finding, as it relates to importation of sport-hunted trophies, should be made after close consultation with the range State and with other importing States, and should take into consideration any assessment of national conservation programs for the species conducted by the Conference of the Parties or the Animals Committee.

Information and Comments: Comments were received from ART, HSUS, IAFWA, IWMC, SCI, and the NRA. ART, IAFWA, SCI, and the NRA support the draft resolution submitted by Namibia to amend Resolution Conf. 2.11, arguing that it has been used by some Parties to support duplicative findings by the importing country based

on standards beyond those required by CITES and have been used to create barriers to wildlife use. IWMC supports the draft resolution and amendments to Conf. 2.11, claiming that Conf. 2.11 undermines basic principles of the Convention. ART advocates the sustainable use of wildlife as an important incentive for the conservation of wildlife. The United States agrees that the sustainable utilization of wildlife can be an incentive for wildlife conservation, whether that utilization is consumptive or non-consumptive. HSUS stated that it opposes any action which might promote or simplify the requirements for the trade in hunting trophies of species listed in Appendix I.

Rationale: This draft resolution, submitted by Namibia, seeks to amend Resolution Conf. 2.11, dealing with the international trade in sport-hunted trophies of species listed in Appendix I. Conf. 2.11 established the procedure whereby the Scientific Authority of the importing country should have the opportunity to conduct a comprehensive examination concerning the question of whether the importation of a trophy is serving a purpose which is not detrimental to the survival of the species. According to Conf. 2.11, this examination should, if possible, also cover the question of whether the killing of the animals whose trophies are intended for import would enhance the survival of the species. Conf. 2.11 recommends that the scientific examination by the importing country be carried out independently of the result of the scientific assessment by the exporting country, and vice versa. Doc. 9.50 takes issue with the scientific examination by the importing country, as regards both non-detriment to the species, and enhancement of its survival. It maintains that some countries have used this recommendation in Conf. 2.11 to refuse to allow imports of hunting trophies that are already approved by the range State. Doc. 9.50 would amend Conf. 2.11 so that the "Scientific Authority of the importing country accept the finding of the Scientific Authority of the exporting country as to whether or not the exportation of the hunting trophy is detrimental to the survival of the species, and limit its examination to the purpose to which the specimen will be put, and whether it is lawfully taken. The Service notes that Article III of the treaty requires separate findings by the exporting and importing countries. The Service also notes that Conf. 2.11 was discussed and adopted in 1976 at COP2 in Costa Rica (after having been introduced by Germany), because many parties felt that Appendix I hunting trophy imports should be prohibited altogether, considering that all such trade is detrimental to the species, while others allowed them. The United States, Germany, Botswana, South Africa, Zambia, and the IUCN maintained that culling of Appendix I species might sometimes be necessary and so trade in trophies could be allowed if it was shown that "such culling could enhance the survival of the species." COP2 agreed to adopt the enhancement requirement. The United States acknowledges that the enhancement question was discussed at the Plenipotentiary meeting, and COP3 and COP8, but expressly disagrees that the issue was rejected by the Parties at any of these meetings.

The Service continues to support Conf. 2.11, but looks forward to working with exporting countries and other importing countries interested in facilitating sport hunting of species listed in Appendix I, to share management and scientific information in such a way as to expedite issuance of permits that meet the necessary requirements, based on national plans which address conservation of species and their habitats. The Service also continues to reserve the right, as does any Party, to impose stricter domestic measures, particularly for species listed under the U.S. Endangered Species Act.

9. Exports of Leopard Hunting Trophies and Skins (Doc. 9.26)

Negotiating Position: The United States supports adoption of this Secretariat document, and the recommendations contained therein, including a draft amendment to Resolution Conf. 8.10 regarding compliance with reporting requirements.

Information and Comments: Comments were received from SCI and HSUS. SCI argues that reasonable quotas should be continued, and all Parties should be encouraged to accept trade that is within the quotas and not use stricter domestic measures. It maintains that this sustainable use of wildlife generates significant conservation benefits. HSUS opposes any actions which might promote or simplify the requirements for the trade in leopard trophies or skins. It supports remedial measures being taken against Parties that have exceeded leopard trophy export quotas approved by the Parties.

Rationale: The Service has supported previous resolutions providing for the importation of leopard skins (*Panthera pardus*), including hunting trophies, under a quota system approved by the COP. However, although the United States supports the concept of such quotas, the listing of some populations as endangered under the U.S. Endangered Species Act and concerns about management capabilities in countries involved in civil wars, has precluded the issuance of permits to some countries with CITES-adopted quotas. Trade in leopard skins for noncommercial purposes is allowed under CITES Resolution Conf. 8.10, which recognizes killing in defense of life and property and to enhance the survival of the species. The United States notes that the Secretariat's paper on this topic provides a very good presentation of the issue. The Secretariat's report discusses the use of export quotas for leopards involving 11 African countries; some countries have not complied with the reporting requirements of Conf. 8.10. The Secretariat has submitted a draft amendment to Conf. 8.10 regarding compliance with these reporting requirements, which the Service supports.

10. Interpretation and Application of Quotas (Doc. 9.51)

Negotiating Position: The United States believes that properly managed harvest programs, including sport-hunting programs of non-endangered species that provide for the sustainable management of the utilized species and long-term preservation of its habitat benefit the wildlife species and the people protecting the resource. The United States also recognizes that CITES provides for Parties to establish stricter domestic measures, such as provided in the U.S. Endangered Species Act, and that in-country changes affecting the management of the hunted species may alter previous assessments of the Parties. In addition the United States is concerned about the reporting omissions discussed in other documents submitted by the CITES Secretariat and supports corrective steps. Nevertheless, the United States will endeavor to recognize quotas adopted by the Parties after an appropriate review process. The United States envisions that this process should involve review of national conservation programs for the affected species in those countries requesting specific export quotas. These reviews should include an assessment by the CITES Animals Committee not only of the population status of the hunted species, management regimes, and enforcement capabilities, but also habitat protection efforts. Based on this assessment, the Committee would recommend to the Parties appropriate biologically-based quotas.

Information and Comments: Comments were received from ART, IAFWA, IWMC, SCI and the NRA which support the draft resolution submitted by Namibia. ART, IAFWA, SCI, and the NRA maintain that this draft resolution is a confirmation of the majority practices of CITES Parties that once quotas are set they should be honored by the importing countries as well as the exporting countries. They maintain that this resolution deals with critical aspects of sustainable use and the conservation and development benefits for Third World communities. IWMC recommends adoption of the draft resolution, and recommends that Parties not wishing to accept the quotas set up by the COP express their position at the COP to be recorded in the Proceedings.

Rationale: This draft resolution, submitted by Namibia, refers to export quotas that have been adopted by the meeting of the Conference of the Parties (COP), for Appendix I species. The draft resolution proposes that the Scientific Authority of the importing country accept the quota approved by the COP as satisfying the requirement that the import will not be detrimental to the survival of the species. The draft resolution therefore proposes that the quotas adopted by the COP serve in lieu of an independent importing country non-detriment finding. No resolution can remove the obligation of the Parties to make independent Scientific Authority findings under the plain language of Article III, Paragraph 3(a) of CITES. Certainly the adoption of quotas by the COP would be considered as persuasive information for the U.S. Scientific Authority as it determines whether the import of an Appendix I trophy would be for purposes that are detrimental to the survival of the species, provided such quotas were based on national conservation programs clearly showing benefit to the species. However, if the United States encounters a situation where hunting pursuant to a previously acceptable quota has in its judgement become detrimental to the species, it will enter into consultations with the affected range State, other importing countries, and the CITES Animals or Standing Committees (as appropriate), to communicate its concerns and seek resolution of the problems.

11. Trade in Specimens of Species Transferred to Appendix II Subject to Annual Export Quotas (Doc.9.27)

Negotiating Position: The United States supports adoption of this Secretariat document, and the recommendations and observations contained therein.

Information and Comments: No comments were received.

Rationale: This agenda item involves a Secretariat report discussing compliance with provisions of quota systems approved by the Conference of the Parties pursuant to Resolution Conf. 7.14, for crocodilians and *Scleropages formosus*. Under export quotas approved by the COP, Parties are required to submit special reports to the Secretariat; the document discusses these special reports and compliance with the export quotas for 10 countries (Ethiopia, Kenya, Madagascar, Somalia, South Africa, Sudan, Tanzania, Uganda, Congo, and Indonesia).

12. Trade in Rhinoceros Specimens (Doc. 9.28)

Negotiating Position: The United States supports decisions of the Standing Committee that illegal trade in rhinoceros specimens undermines the effectiveness of CITES. The United States continues to support decisions of previous meetings of the Conference of the Parties and the Standing Committee regarding rhinoceros conservation and trade in rhinoceros horn.

Information and Comments: Comments were received from HSUS and SCI. HSUS strongly supports the Service's general comments on this issue and agrees that the illegal trade in rhino parts is undermining the effectiveness of CITES. It urges the United States to oppose any attempts to weaken previously passed resolutions condemning the rhino horn trade, such as Conf. 6.10, and urges the United States to oppose proposals that would encourage rhinoceros trade. SCI argues that while trade in rhinoceros specimens is a serious problem, too much emphasis is being placed on trade bans as solutions to this problem; it urges Parties to seek more innovative solutions. The United States is supportive of innovative solutions and partnerships designed to eliminate illegal trade in rhinoceros specimens and benefit the conservation of rhinoceros populations in the wild, as long as those solutions are consistent with the requirements of the treaty.

Rationale: This document is a report of the Secretariat discussing the status of rhinoceros populations, and the threat to their populations from poaching pressure for their horn to supply the international illegal trade in traditional medicines and dagger handles. The report reviews measures taken by the Standing Committee and activities of the Animals Committee between COP8 and COP9 regarding trade in rhinoceros horn, including decisions of the 29th, 30th, and 31st meetings of the Standing Committee. The report summarizes activities of technical assistance and high-level delegations regarding efforts to eliminate the illegal trade in rhinoceros horn. The report also discusses activities of the United Nations Environment Programme (UNEP), including the Lusaka Agreement on Cooperative Enforcement Operations Directed at International Illegal Trade in Wild Fauna and Flora, and the UNEP Elephant and Rhinoceros Conservation Facility. The report also discusses measures taken by China, Taiwan, Hong Kong, Zambia (as relates to the Lusaka Agreement), and the United States (as relates to the Pelly Amendment). The United States continues to be an advocate for strong enforcement of the Convention, and use of all possible measures to encourage countries to effectively implement the Convention. The United States continues to support decisions of the Standing Committee that illegal trade in rhinoceros specimens undermines the effectiveness of CITES.

13. Conservation of Rhinoceros in Asia and Africa (Doc. 9.35)

Negotiating Position: The United States continues to be supportive of efforts to benefit the conservation of rhinoceros species in Asia and Africa, especially those that address trade in rhinoceros specimens in contravention of the Convention. Oppose any resolution that contradicts the requirements of the Convention. Oppose any text advocating commercialization of rhinoceros horn stockpiles.

Information and Comments: Comments were received from HSUS. It urges the United States to oppose Doc. 9.35, which they believe would greatly weaken CITES' resolve to eliminate the rhinoceros horn trade. It opposes the repeal of Resolutions Conf. 3.11 and 6.10 called for in Doc. 9.35.

Rationale: The United States continues to be supportive of efforts to benefit the conservation of rhinoceros species in Asia and Africa, while opposing any measures that contradict the requirements of the Convention or might lead to the commercialization of rhinoceros parts or products. The United States is highly supportive of efforts by major consumer states to ban the importation and sale of rhinoceros parts and products, and to cooperate in enforcement efforts.

14. Trade in Tiger Specimens (Doc. 9.29)

Negotiating Position: Support all possible measures to encourage countries to effectively implement the

Convention with regard to trade in Tiger Specimens. Encourage discussion of cooperative efforts to benefit tiger conservation.

Information and Comments: Comments were received from HSUS and SCI. HSUS supports the U.S. position. SCI supports control of the illegal trade in tiger specimens, but feels that too much emphasis is being placed on trade bans as a solution to conservation problems. It calls on the Parties to seek other, more innovative solutions. The United States is supportive of innovative solutions and partnerships designed to eliminate illegal trade in tiger specimens and benefit the conservation of tigers in the wild, as long as those solutions are consistent with the requirements of the treaty.

Rationale: The United States continues to be an advocate for strong enforcement of the Convention, and use of all possible measures to encourage countries to effectively implement the Convention. The United States continues to support decisions of the Standing Committee that illegal trade in tiger specimens undermines the effectiveness of CITES.

The tiger (*Panthera tigris*) has been included in CITES Appendix I since CITES entered into force in 1975. Nevertheless, its numbers have continued to decline due to persistent poaching and smuggling to supply the illegal markets, mainly for traditional medicines. The first meeting of tiger range States on the conservation of the tiger was held March 3–4, 1994 in New Delhi, India. The meeting established an international framework for the conservation of tiger, the "Global Tiger Forum". The Global Tiger Forum produced a mission statement (see Annex, Doc. 9.29) calling for worldwide attention to and cooperation for the conservation of the species.

The United States is facilitating the presentation at COP9 of a special program by the Government of India at COP9, dealing with the conservation crisis facing the tiger.

15. Illegal Trade in Whale Meat

Negotiating Position: Trade for primarily commercial purposes in specimens of species listed in Appendix I by a non-reserving Party is in Contravention of the requirements of the Convention. Any commercial trade in parts and products of Appendix I species undermines the effectiveness of the Convention.

The United States supports a discussion at the COP of illegal trade in species of whales listed in Appendix I of CITES. The United States recommends discussion of the following recommendations at COP9, and their possible adoption as Decisions of the Conference of Parties: (1) Encourage IWC to continue to cooperate with CITES Parties and the CITES Secretariat; (2) Reaffirmation by the CITES Parties of their support for the IWC moratoria on commercial whaling; and (3) Urge IWC to continue to explore the issue of illegal trade in whale meat, and ask it to report to both the CITES Standing Committee in one year and the tenth meeting of the CITES Conference of the Parties (COP10) on any developments regarding this issue.

Information and Comments: Comments were received from Japan, CMC, ESP, HSUS, and Monitor. Monitor stated (at the public meeting) that there is a huge market for whale meat in Japan. ESP (at the public meeting) supported this agenda item for discussion at COP9 and stated that it is crucial to develop some sort of monitoring scheme. CMC and HSUS supports the U.S. position, particularly in the recommendation that IWC and CITES cooperate and share information about this trade, and that IWC explore the issue and report back to CITES on any developments. CMC states that Japan has not address its obligations on whales, due to its reservations and lack of compliance with Conf. 4.25; CMC urges IWC to develop a certificate or origin for all whales taken at sea.

Japan considers that IWC has all relevant information pertaining to this topic, and that it is more appropriate for IWC to discuss this issue than for CITES. Japan objects to the inclusion of this item on the COP9 agenda; the United States disagrees. The United States notes that IWC adopted a resolution (IWC/46/61) entitled "Resolution on International Trade in Whale Meat and Products", which: (1) Recognized that IWC has called upon CITES to take all possible measures to support the IWC ban on commercial whaling for certain species of whales; (2) discussed other past decisions of the CITES Conference of the Parties; (3) noted that all stocks of whales for which IWC has zero catch limits are listed in CITES Appendix I; and (4) called upon IWC members to strictly enforce their existing international obligations under both IWC and CITES. CITES is *the* international treaty dealing with trade in wild fauna and flora, and therefore, the United States considers it appropriate to discuss trade in whale meat during a meeting of the CITES Conference of the Parties.

Rationale: The United States requested that this item be included on the agenda for COP9. There was extensive discussion at the May, 1994 meeting in Mexico of the IWC regarding illegal international trade in whale meat, including involvement by CITES Parties. All whales subject to the IWC moratorium on commercial harvest are listed in CITES Appendix I. A resolution was adopted by IWC (introduced by the United States and other Parties) on this topic, and the issue is discussed in the IWC Infractions Report. The Service submitted the information in the IWC Infractions Report on international trade in whale meat to the CITES Secretariat. The United States is concerned that illegal trade in whale meat undermines the effectiveness of CITES for whale species, and submitted a paper on this topic for discussion at COP9. Several IWC member countries raised concerns at the IWC meeting that it was inappropriate to discuss trade in whale specimens outside of CITES. The United States believes that a CITES COP is the appropriate venue for such discussions, while reaffirming the current efforts of IWC regarding illegal trade of whale meat.

16. Trade in Shark Products

Negotiating Position: Encourage discussion of how best to collect data on international trade in shark parts and products, particularly how to document catches by species; and (2) to collect data that will provide the best information about the possible impact of international trade (including introduction from the sea) in shark parts and products on both shark populations and the ecosystems of which they are a part.

Information and Comments: Comments were received from Japan, CMC, HSUS, and MTSG. HSUS supports the U.S. position and its recommendation that the Animals Committee review the trade in sharks and shark products between COP9 and COP10 and assess the biological and trade status of shark species traded internationally. CMC encourages the COP to provide an opportunity for leadership in international shark management and urges the United States to encourage comprehensive global data collection on sharks. CMC urges the Parties to ask IUCN, rather than the Animals Committee, to review the international trade in shark parts and products, between COP9 and COP10. MTSG inquired at the public meeting whether there has been consideration of developing a resolution on sharks. The United States prefers to have a discussion of the issue that will lead to a possible Decision of the Conference of the Parties, and direction

being given to the Animals Committee to explore options to collect data on trade in shark parts and products. Japan agrees that there is need for more data regarding trade in sharks, but objects to inclusion of this item on the agenda because: (1) Sharks are not listed in the CITES Appendices, claiming that there is no precedent for such a discussion; (2) shark management should be promoted through regional and international fishery management organizations which have competence; (3) funds are not available for this issue; and (4) CITES Parties already face excessive workloads, and the Parties cannot require data collection through a Decision of the COP. Japan prefers that this issue be discussed by ICCAT or FAO. The United States does not wish to have a discussion of shark management, but rather wishes to facilitate a discussion at the COP of ways to collect data on trade in shark parts and products. The United States notes that there are, at this time, no regional or international organizations with competence for shark management. CITES is the treaty dealing with international trade in wildlife parts and products, and is therefore an appropriate venue for such a discussion. Furthermore, the United States believes that precedent does exist for discussion of non-CITES species, and that authority for such discussion is to be found both in the Convention and in Resolutions of the Conference of the Parties.

Rationale: The United States requested that this item be included on the agenda for COP9, and submitted a paper to the CITES Secretariat for discussion. The United States requests in the paper it submitted on this topic that this agenda item be renamed "Trade in Shark Parts and Products", in order to more accurately frame the debate. It is not the intent of that document to discuss shark management regimes, including catch quotas, minimum sizes, time and area closures, or gear restrictions.

As was discussed in the January 27, 1994 **Federal Register** notice, the United States considered whether or not to submit a proposal to COP9 to include several taxa (families or genera) of sharks in Appendix II. There is limited information about a recent increase in international trade in shark parts and products, particularly in fins for the food market. The United States considered there to be insufficient biological and trade data on which to base a listing proposal. The United States believes that this is an important issue for the Parties to discuss.

The intent of the United States in asking that this issue be discussed by the Conference of the Parties is twofold: (1) To encourage discussion of how best to collect data on international trade in shark parts and products, particularly how to document catches by species; and (2) to promote the collection of data that will provide the best information about the possible impact of international trade (including introduction from the sea) in shark parts and products on both shark populations and the ecosystems on which they depend.

17. Trade in Plant Secimens

(a) Nursery registration for artificially propagated Appendix I species (Doc. 9.30). Negotiating Position: Oppose establishment of a registration system, as proposed in the draft resolution, within the CITES Secretariat for plant nurseries artificially propagating specimens of species included in Appendix I. The United States supports a system that would improve the credibility of the existing system for determining which plant specimens are artificially propagated.

Information and Comments: Comments were received from COGG, Grigsby, PA, AOS, CCGA, Mr. John de Kanel and Mr. Gary Lyons. All these commenters opposed the draft CITES resolution and support the U.S. position. The commenters feel that the proposal is unworkable, burdensome, and illegal in its content. The commenters felt that most CITES Parties, particularly developing countries, do not have the resources to implement a nursery registration program. They also maintain that CITES should not attempt to regulate trade in "domestic" or artificially propagated plants or the domestic activities of individuals or businesses. They further argued that nursery registration will not impact the illegal trade in Appendix I plants and that there are no recognizable benefits to plant conservation or trade control from nursery registration. They also argue that annual inspections and inventory requirements under a nursery registration program are impossible for growers to meet. COGG and CCGA argued that all artificially propagated specimens of Appendix I species should be traded as Appendix II plants, either with Appendix II permits or with a phytosanitary certificate being considered as an Appendix II permit as long as a statement of artificial propagation accompanies the phytosanitary certificate.

Rationale: The registration system proposed in this draft resolution is complex and would be costly to implement by many Parties. Furthermore, it may place too much of a burden with nurseries themselves in determining what constitutes artificially propagated specimens, and thereby be counterproductive. The current draft of this resolution is an improvement over previous versions.

(b) Revision of the consolidated Resolution (Doc. 9.31). Negotiating Position: Support Doc. 9.31 Annex 1, on salvage, if amended, to exclude direct import to registered nurseries. Support Annex 2, on education, with some modifications. Only support Annex 3 on nursery registration if amended to separately indicate those nurseries trading in both wild-collected and artificially propagated plants and those dealing only in the latter. Oppose deletion of Conf. 5.15(b) (licensing).

Information and Comments: No comments were received.

Rationale: Doc. 9.31 Annex, No. 1 would allow the import of salvaged specimens for commercial propagation directly to registered nurseries. The key issue is whether salvaged wild specimens can be imported for propagation purposes, with only the artificially propagated offspring to be used for commercial purposes. Registering nurseries as in Doc. 9.30 (see above) does not appear to be a practicable solution. Instead, allowing such propagation by collaboration of the commercial nursery with an importing botanical garden or scientific institution would provide a feasible system. Regarding nursery registration and licensing, the United States opposes the deletion of Conf. 5.15(a). The United States agrees with the need not to penalize nurseries trading appropriately in wild specimens, but for enforcement purposes, it is necessary to distinguish between those nurseries that deal in wild-collected and artificially propagated specimens and those that deal only in the latter.

(c) Standard reference for Orchidaceae. Negotiating Position: No document has been received from the CITES Secretariat. The United States supports continued work toward a standard reference for traded orchid species, but believes that the financial commitment for such a compendium should be considered from external funding.

(d) Implementation of the Convention for timber species (Doc. 9.52). Negotiating Position: The United States supports the establishment of a Timber Species Working Group of the CITES Plants Committee. This Working Group would review the need and scope for modification of current administrative practices specific to the implementation of listings for timber species.

Information and Comments: No comments were received.

Rationale: The United States notes that the provisions of CITES apply to all species of wild fauna and flora, including tree species used as timber; some timber species are already listed in the CITES Appendices. CITES' purview is in addition to the fact that the trade in timber species may also come under the competence of another international treaty, convention, or agreement. Approximately 18 timber species are listed in CITES Appendices I, II, and III. There has been some listing activity with such species at nearly every COP, from 1973–1992. At COP8, four species were included in the Appendices for the first time: one species was added to Appendix I (Brazilian rosewood), and three were added to Appendix II. There is increasing attention being paid by the CITES Parties to commercially significant timbers.

Some complexities and the scale of the timber trade provide unique concerns to the CITES Parties in terms of the following: (1) Identification of products in trade; (2) pre-Convention concerns for species included in Appendix I (e.g. with heavily traded guitars); and (3) debate on what parts and derivatives should be excluded for Appendix II. Doc. 9.52 recommends the establishment of a small Working Group with both timber-trade and CITES expertise represented and a clear mandate to: (1) Review progress; and (2) consider what further action may be required to facilitate the Convention's future contribution to timber-species conservation. This document recommends that the Working Group be under the direction of the Standing Committee. The United States agrees with the CITES Secretariat in supporting the establishment of such a Working Group under the auspices of the Plants Committee.

(e) Ramin (Gonystylus bancanus) (Doc. 9.53). Negotiating Position: The United States supports cooperation in examining the issue of ramin (*Gonystylus spp.*) trade by interested Parties and Non-governmental Organizations (NGO'S) through a working group under the leadership of the Asian Regional Representative of the CITES Plants Committee. The United States opposes the recommendation as worded in Doc. 9.53, p.2.

Information and Comments: No comments were received.

Rationale: The recommendation is appropriate in calling for cooperative work by the range States and the importing States on whether and/or how ramin should be listed. The United States feels the recommendation is inappropriate, however, in asking the Parties to decide that the species needs conservation attention, and that it will qualify for either Appendix II or for Appendix III; the latter is a national judgment.

18. Significant Trade in Appendix II Species (Doc. 9.34)

Negotiating Position: The United States continues its long-standing support for the continued focus of the Parties on Appendix II species identified as subject to significant trade and the proper implementation of Article IV, as critical to the implementation of the treaty and species conservation. Support the provision of funding for the coordination and implementation of significant trade study projects, with oversight by the Animals, Plants, and Standing Committees. The United States supports extension of the significant trade process to species of plants listed in Appendix II.

Information and Comments: Comments were received from HSUS and DOW. HSUS supports the Service's general comments and strongly supports the continuation of the Resolution Conf. 8.9 process. DOW concurs with the U.S. support for the continued review of Appendix II species identified as subject to significant trade and the proper implementation of Article IV.

Rationale: This topic refers to the trade in those Appendix II species identified as subject to significant trade, for which a review is necessary to determine if there exists sufficient biological information to warrant trade at current levels. Many of these species may have been traded at levels detrimental to their survival. The CITES Parties have provided funds to the World Conservation Union (IUCN) and the Conservation Monitoring Centre to assess priorities in studying these species. The United States has provided funds for field projects involving several of these species.

This process has worked effectively since COP8, with the implementation of Conf. 8.9. The Animals and Standing Committees have taken a very active role in this process, with net benefit for the conservation of some species and for improvements in the implementation of the Convention. The United States supports continuation of this process, for both animals and plants, with a high priority being placed on implementation of studies by Parties, scientific assessments, development of management plans, implementation of scientifically-based quotas when appropriate, and effective implementation of CITES Article IV. The United States also looks forward to working with the Animals Committee, at COP9 and in the future, to include coral species subject to high levels of international trade, in the significant trade review process. Resolution Conf. 8.9 referred to animal species only, but extension of this useful process to plant species listed in Appendix II will facilitate effective implementation of CITES Article IV.

19. Standardization of CITES Permits and Certificates (Doc. 9.38, Annex 1 and 2)

Negotiating Position: The United States supports some of the provisions of the current proposal, but considers others to be impractical, burdensome, or unenforceable.

Information and Comments: No comments were received.

Rationale: The United States strongly supports a standardized CITES form for permits and certificates. However, the new proposed form has several provisions that are of concern. The United States would like to see the form simplified while still providing information and security measures necessary to ensure the legal movement of wildlife and plants.

20. Non-commercial Samples of Skins (Doc. 9.37)

Negotiating Position: The United States supports exploration of ways to facilitate legitimate trade in CITES-listed species that are in compliance with the provisions of the treaty, while noting that international trade in skin samples is commercial.

Information and Comments: Comments were received from HSUS. It urges the United States to oppose any attempt to weaken the treaty by simplifying the international trade in non-commercial samples of skins.

Rationale: CITES monitors trade in listed species to ensure that it is in compliance with the provisions of the treaty. The Parties have encouraged the ranching and farming of a number of species, particularly crocodilians; this has resulted in significant progress in protecting certain species and in species' recovery. The United States supports efforts to monitor and facilitate trade in ranched specimens. The United States supports setting up a system to allow skin samples to be transported to or through any CITES Party with a minimum of delay, and looks forward to discussing this with the Parties at COP9.

21. Marking of Crocodilian Specimens (Doc. 9.36)

Negotiating Position: The United States supports a tagging requirement

for all Crocodilian species before being allowed to be traded by CITES Parties, if it is enforceable and practicable, regardless of any reservations by any CITES Party.

Information and Comments: Comments were received from HSUS and IWMC. HSUS commented that it supports improvements in the marking of crocodile skins as an aid to enforcement. IWMC supports the draft resolution of the Animals Committee.

Rationale: At COP8, the United States and Australia jointly submitted a resolution to require the skins of all crocodilian species to be tagged before being allowed to be traded by CITES Parties (whether or not a reservation has been entered by a Party). The resolution that was adopted, Conf. 8.14, established the framework for a system of universal marking for all crocodilian skins in trade, as a response to serious problems of illegal trade in crocodilian skins, parts, and products. The Animals Committee was charged with setting up the system for the Parties. Due to problems with implementation of portions of Conf. 8.14, the Animals Committee has prepared a draft revision of Conf. 8.14.

22. Transport of Live Specimens (9.39)

Negotiating Position: Support the adoption by the COP of the report of the Chair of the Working Group on the Transport of Live Specimens (TWG). The United States will support the provision of time near the beginning of the first week of COP9 for those interested in the TWG to meet and discuss transport issues, prior to full discussion in Committee II. The United States will remain an active participant in the TWG, and with all aspects of the transport of live wild animals. The Service agrees with the Chair of the TWG that unless the Parties take these matters seriously, and put resources into the TWG, the TWG should not be continued. The United States supports continuation of the Transport Working Group in some form, with a key emphasis on training.

Information and Comments: Comments were received from EIA and HSUS. EIA commented at the public meeting that little progress had been made by the CITES Parties in improving the transport of live animals, and urged that the United States seek greater implementation of transport requirements by CITES Parties, and greater enforcement of CITES transport requirements. HSUS commended the Service for its work to improve the conditions for the transport of live specimens and recognized the strong leadership of the Chair of the Working Group, Dr. Susan Lieberman. It urged the United States to support the elevation of the Transport Working Group to Committee level so that it can receive proper funding.

Rationale: Dr. Susan Lieberman of the Service's Office of Management Authority has served as Chair of the TWG since COP8. Copies of all reports of the Chair of the TWG to the Standing Committee are available on request, including the Terms of Reference of the TWG. The Chair submitted a report to the Standing Committee Chair and to the Secretariat, for transmission to the Parties and discussion at COP9. That report makes recommendations for the future of the TWG. The Service fully supports the report, and recommends its adoption, while looking forward to an active discussion among the Parties at COP9 of budgetary and other recommendations in the report. Those budgetary recommendations would facilitate increased training efforts and greater involvement of exporting Parties in TWG activities and deliberations, which the Service supports. The Service supports the provision of time near the beginning of the first week of COP9 for those interested in the TWG to meet and discuss transport issues, prior to full discussion in Committee II. Several past participants in TWG activities have inquired as to whether such a meeting of the TWG would be possible; the Service believes that it would be in the best interest of CITES implementation and of the transport of live animals.

The humane transport of live wild animals remains a significant concern of the United States. The TWG's Terms of Reference with the Standing Committee include working to improve implementation of the Convention and relevant resolutions, training, improvement of international standards, coordination with the International Air Transport Association Live Animals Board, and the transport of live wild birds. The Service believes that improvements have been made in the conditions under which live CITES-listed species are transported, while recognizing that there remains much room for improvement. The report notes that in order to become a truly functioning Working Group, the TWG must have: (1) Regional Representation; (2) Decision-making by Parties; (3) Rules of Procedure as for the other committees; and (4) funding from the core budget. The Service does not recommend an increase in the Secretariat's Budget to support activities of the TWG; rather, the Service agrees that the Parties should discuss the three options identified in the Chair's report for the future of the TWG: (1) Establish a new permanent committee dealing with live animals issues; this would require re-programming from the Budget, possibly from the Nomenclature and Identification Manual Committee; or (2) Dissolve the Transport Working Group, and retain only a Transport Representative to the Standing Committee; or (3) retain the current arrangement, depending upon volunteers and external funding.

23. Implementation of Article XIV, Paragraphs 4 and 5 (Doc. 9.40)

Negotiating Position: Support adoption of the resolution submitted by the United States, which deals with the implementation of Article XIV, paragraphs 4 and 5 of the Convention.

Information and Comments: Japan, CMC and HSUS commented on this issue. Japan supports the U.S. resolution in principle, but recommends several revisions. Japan believes that the draft resolution runs counter to the movement within CITES to pursue stricter enforcement of permit issuance. The United States is concerned with this interpretation of the draft resolution, and looks forward to discussing these concerns with Japan and other Parties at the COP. HSUS supports the U.S. position. CMC is concerned that the U.S. draft resolution is being discussed without a proposal to include a marine species in Appendix II being discussed at the same Conference, and that given the time that is to be focussed on other issues at COP9, Parties will not be able to give it sufficient attention; CMC thus urges the United States to withdraw this resolution.

Rationale: The U.S. goal in submitting this resolution is to clarify how an Appendix II listing could be implemented expeditiously for a marine species whose management is under the competency of a pre-existing treaty.

The provisions of CITES apply to all species of wild fauna and flora, including marine species. The management of many marine species comes under the jurisdiction or competence of another international treaty, convention, or agreement. International trade in any species of marine fauna or flora is also within the purview and competence of CITES. Therefore, even if a marine species is subject to management under another international treaty, convention, or agreement, if it is listed in any CITES Appendix, international trade and introduction from the sea in the species is regulated by CITES.

CITES anticipated such situations when the treaty was written. Article XIV, paragraph 4, of the Convention

provides that a State party to CITES, which is also a party to any other treaty, convention, or international agreement which was in force at the time of the coming into force of CITES and under the provisions of which protection is afforded to marine species included in Appendix II, is relieved of the obligations imposed on it under CITES with respect to trade in specimens included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention, or international agreement.

This relief from CITES obligations does not apply to specimens of species included in Appendix I. For example, several whale species are managed under the competence of the International Convention for the Regulation of Whaling, but all those species are listed in Appendix I.

Currently no marine species whose management is under the competence of another treaty, convention, or agreement is listed in Appendix II (with the exception of the West Greenland stock of *Balaenoptera acutorostrata*). The United States does not believe that this provision of the Convention in Article XIV has been used, and standards for its implementation have not been developed. The United States has determined that it would be wise to plan for the need to implement Article XIV, by specifying requirements for certificates issued pursuant to Article XIV, paragraph 5, of the Convention, even if its use is not necessary at this time. The Service notes that Appendix II allows for international commercial trade. The resolution provides for the utilization as a valid certificate under Article XIV, paragraph 5, of a certificate of origin or statistical document issued on the authority of the other treaty, convention, or international agreement, with certain stipulations of minimum information and validation as required by CITES. Such certificates are only an option for CITES Parties that are also parties to the other treaty, convention, or agreement.

24. Disposal of Confiscated Live Animals (Doc. 9.55)

Negotiating Position: The United States supports the intent to establish uniform guidelines for the Parties on how to deal with confiscated live animals that will benefit both the welfare of the individual animals and the conservation of the species in the wild, while working to make minor modifications to the proposed guidelines.

Information and Comments: Comments were received from HSUS, which urges the United States to support the resolution. It is especially supportive of the resolution's call for Parties to have a plan of action for the short- and long-term care of confiscated live animals. It urges the United States to support changes to the resolution including: (1) A recognition that animals should be returned to the wild when its beneficial to conservation efforts and is in the best interest of the welfare of the animal; and (2) confiscated Appendix II specimens should not be sold to research facilities.

Rationale: This issue was discussed at the Animals Committee, and the Animals Committee prepared a draft resolution on this issue. The Service is supportive of uniform guidelines for the Parties on how to deal with confiscated live animals, that will benefit both the welfare of the individual animals and the conservation of their species in the wild. The Service is supportive of such guidelines, to the extent they are consistent with U.S. law. The Service is concerned about the risk of introduction of disease to wild populations from confiscated live animals being considered for reintroduction programs. The Service believes that transport and handling concerns for live animals should be coordinated with the Working Group on the Transport of Live Animals.

Interest in what Parties should do with confiscated specimens, particularly live animals, goes back to the drafting of the Convention. The re-export of Appendix II specimens does not require a Scientific Authority finding. The Parties have spoken quite clearly on the issue of return of confiscated specimens to the country of origin, when feasible.

25. Disposal of Skins of Illegal Origin

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time.

26. New Criteria for Amendment of Appendices I and II (Doc. 9.41, Annex 4, 9.41.1, 9.41.2)

Negotiating Position: Support adoption of the alternative Annexes submitted by the United States on this issue, rather than those prepared by the Standing Committee (as pertain to Annexes 1 and 2 of the draft resolution). The United States basically supports the other annexes of the Standing Committee resolution.

Information and Comments: Comments were received from Japan, Alaska, CIEL, CMC, DOW, EIA, HSUS, IWMC, IWCo, NRA, NRDC, SCI, WMI, and WWF. Japan supports adoption of the Standing Committee draft resolution, and supports inclusion of numerical criteria. IWMC, NRA, WMI and SCI oppose the alternative Annexes submitted by the United States, call for their withdrawal, and urge support of those prepared by the Standing Committee. SCI and WMI argue that the criteria proposed by the United States are not actual criteria, and claims that the U.S. proposal uses undefined scientific terms with a subjective and ill-defined process. NRA claims that the U.S. proposal does not provide objectivity, and are too arbitrary. NRA also objects to the inclusion of ecological extinction in the definition of "threatened with extinction" in the U.S. proposal. WMI supports the criteria prepared by the Standing Committee and recommends that they be adopted on a four-year provisional basis and used as the criteria for evaluating new listing proposals. WMI argues that listing determinations should be provisional until these criteria can be further validated. SCI recommends that the Standing Committee paper be used as a basis for further negotiations in which: (1) Appendix I should become a list of those species in danger of extinction in the near future; (2) Appendix II is a list of species in trade and threatened with extinction in the foreseeable future; (3) quotas should be employed as a mechanism to allow trade and to recognize the benefits of use; and (4) the use of "look-alike" listings should be severely limited. The United States supports the utilization of quotas in the transfer of species from Appendix I to II, on a case-by-case basis. Furthermore, Appendix I includes not only species that are endangered, but also species that are threatened with extinction. Appendix II includes species that may become threatened if trade is not regulated, and cannot be limited to species that will be threatened in the foreseeable future.

Alaska opposes the alternative Annexes submitted by the United States, urges their withdrawal, and support for the draft criteria prepared by IUCN and amended by the Standing Committee. It argues against the U.S. proposal as not providing any additional "criteria" or biological precision that will assist the listing process. While it recognizes the importance of providing adequate flexibility for those taxa which do not fit a process involving numerical guidelines, it calls for a compromise that separates the appropriate flora or fauna into applicable categories.

The United States, in response to the above commenters, notes that the alternative Annexes 1 and 2 that it submitted are indeed criteria, although

they are not numerical thresholds. The United States notes that a criterion, as defined in Webster's Dictionary, is a "standard by which a judgment is based." The United States considers its alternative Annexes 1 and 2 to be legitimate, scientifically-based, useful standards by which to make a judgment as to whether or not to include a species in Appendix I. The United States considers the arbitrary numerical cut-offs in the Standing Committee document to be unfounded scientifically, and not found in the peer-reviewed scientific literature. IWMC recommends that the U.S. proposal be rejected, and criticizes the United States for preparing the document outside of the framework established for development of the criteria. The United States notes that the final document prepared by the Standing Committee was not available to it or the other Parties until after the June 10, 1994 deadline for submission of draft resolutions for consideration at COP9, and preparation of such a draft resolution is within the U.S. rights as a Party to the Convention. IWMC recommends adoption of the Standing Committee version, with modifications.

CMC supports the proposal submitted by the United States, while also noting that although the Standing Committee proposal is an improvement, it continues to reflect significant weaknesses. CMC particularly opposes the inclusion of hard numerical criteria to categorize all species and life history strategies, and supports the inclusion of ecological extinction in addition to biological extinction. While supporting the U.S. proposal, CMC urges the U.S. Delegation to ask that the issue be set aside and that no resolution be adopted on this issue at COP9.

CIEL, on behalf of the "New Listing Criteria Working Group" of the Species Survival Network supports the U.S. position in opposition to the numerical requirements of the Standing Committee proposal. CIEL considers Doc. 9.41 to be contrary to the text and spirit of CITES. CIEL considers the U.S proposal to be superior to the Standing Committee criteria, in large measure due to the removal of all numerical requirements. CIEL also supports the inclusion by the United States of factors relating to the ecological role of species, and the importance of genetic diversity. CIEL provided comments that suggested rewording of the background document submitted by the United States. While CIEL's suggestions are useful, the background document will not be part of an adopted resolution, but rather is meant to explain the rationale for the U.S. proposal. CIEL also included recommendations, submitted October 19, 1994, regarding Annexes 1 and 2, that are still under review, and will be given full consideration by the United States during deliberations at COP9.

NRDC, EIA and HSUS support the U.S. revisions to Annexes 1 and 2. NRDC called on the United States to remain steadfast in its opposition to the Standing Committee proposal. It argues that the drafting process has been secretive, inconsistent, and confused and believes that there will be considerable confusion about the proposals at COP9. NRDC argues that it is inappropriate to attempt to apply the same quantitative standards to all taxa. NRDC suggested that the United States re-think its acceptance of Annex 4 on precautionary principles; CIEL, HSUS and IWCo also strongly disagree with the U.S. support for this Annex. CIEL and IWCo prefer the precautionary language of the Berne Criteria, particularly in requiring a higher standard of proof for downlisting or deletion than for the reverse. IWCo also opposes the quota provisions of Annex 4 to the Standing Committee resolution, as both impractical and unenforceable. The United States will review the precautionary measures annex, and discuss it fully with the Parties at COP9, but at this time disagrees with these commenters, and supports the Annex; the United States believes that such quotas are enforceable.

HSUS noted that it was likely that the final version of listing criteria will be assigned to a Working Group of the COP, and urged the United States to insist that such a Working Group have a balanced membership and that NGOs be allowed to participate. The United States has always supported representation of non-governmental organizations in Working Groups of Committee I and II and meetings of the Conference of the Parties, as their expertise is helpful to the Parties. DOW prefers the U.S. proposal to the current Standing Committee draft because it does not rely on rigid numerical criteria. It urges the United States to oppose the proposed Standing Committee listing criteria. IWCo supports the approach in the U.S. proposal, and disagrees strongly with the view that numerical values should be retained in Appendix I criteria.

WWF urges the United States to support amendments to the Standing Committee draft resolution that have been jointly proposed by the WWF, the Traffic Network, and IUCN for the draft listing criteria. The Service received a 63-page document on October 18, 1994 from WWF, analyzing the Standing Committee document and proposing further revisions to it. Although the Service has not completed its review of that document, it does contain many useful suggestions. The United States may be able to support elements of the WWF document, and looks forward to detailed discussions at the COP. Many specific comments on the U.S. proposed alternatives are included in the WWF document, which the United States will address at the COP.

NRDC submitted a 25-page document to the Service, also on October 18, 1994, which analyzes the Standing Committee document, and proposes an alternative listing criteria resolution that incorporates elements of the Standing Committee and U.S. submissions. NRDC contends that the drafting process of the Standing Committee submission has been secretive, hurried, inconsistent, and confused; they claim that the numerical criteria have been changed repeatedly. They also note that Doc. 9.41 Annex 4 from the Animals Committee is presented as a third alternative, without any clarification as to whether it is to be considered an amendment to the Standing Committee draft resolution. They also strongly criticize the validation process that has taken place. NRDC also opposes the quota systems in Annex 4 of the Standing Committee proposal, and urges the United States to change its position on this annex. As with the WWF paper, the Service has not completed its review of the NRDC proposed alternative resolution. However, it contains many useful suggestions, and is an excellent attempt to synthesize the existing proposals, which the United States will take seriously into consideration during the deliberations at COP9.

Rationale: The existing CITES listing criteria, known as the "Berne Criteria" (Resolutions Conf. 1.1 and 1.2) were developed at the first CITES Conference in 1976 in Berne, Switzerland. The United States agrees that the Convention will be strengthened by reevaluating the Berne Criteria for listing species in the Appendices, and that the Berne Criteria need to be reviewed and adapted to address a broader array of taxa and to be more descriptive and definitive, to the extent possible. At the same time, the United States notes that an inherent strength of CITES, which must be safeguarded, is its ability to seek balanced conservation-based solutions for a broad range of species and populations being considered. Thus, if any revision of the Berne Criteria is to be adopted at COP9, the United States is supportive of retaining maximal flexibility while firmly maintaining scientific credibility.

The move to revise the Berne Criteria originated at the 1992 CITES Conference, in Japan (COP8). At COP8 the Parties agreed to start a process, coordinated by the Standing Committee, to develop a scientifically sound revision for consideration at COP9 in 1994. The World Conservation Union (IUCN) was asked to do a first draft, which would first be reviewed at a joint meeting of the Standing, Animals and Plants Committees, and put into CITES resolution form. The United States participated in a joint meeting of the Standing, Animals, and Plants Committees in Brussels in August–September 1993, which reviewed the IUCN draft and produced a draft resolution that was circulated to the Parties.

The Service submitted comments to the Standing Committee, after consultation with other Federal agencies and reviewing extensive public comments received. The U.S. comments maintained that much of the draft resolution was not valid scientifically, and was not acceptable from management or practical perspectives. The United States believed that the criteria as proposed met neither the CITES treaty's requirements for the conservation of species in their ecosystems, nor the diverse needs of the CITES Parties. The U.S. comments and those of other Parties were discussed at the 31st meeting of the Standing Committee, in Geneva in March 1994. Some of the U.S. comments were taken into consideration in developing the final Standing Committee draft resolution. The Standing Committee resolution contains six annexes, several of which the United States looks forward to discussing further with the CITES Parties at COP9. In particular, the United States believes the Standing Committee draft is an improvement on the Berne Criteria as regards to precautionary measures. However, the United States believes that Annex 1 (Biological criteria for Appendix I) and Annex 2 (Criteria for inclusion of species in Appendix II) are in need of major revision, particularly from a scientific perspective. The United States is particularly concerned about the utility and scientific validity of arbitrary numerical cutoffs for decision-making on which Appendix a species should be included in. After detailed review of the scientific literature and consultation with other Federal agencies, the Service has submitted alternatives to those Annexes to the Secretariat, along with some additional material for inclusion in the resolution. The United States intent is to urge the CITES Parties to substitute the Annexes 1 and 2 it submitted for those prepared by the Standing Committee.

The biological criteria submitted by the United States for inclusion of species in Appendix I (Annex 1) are grounded in the scientific literature, and are based on the concept that determination of whether a species is threatened with extinction should be risk averse, utilizing the best available scientific and trade information, and assessment of a series of biological factors and criteria. The proposed Annex 1 lists a series of interdependent factors to be included in an assessment of the status of a species, and thereby the determination that it is threatened with extinction. The criteria for inclusion of species in Annex 2 (in accordance with Article II paragraph 2(a)) of the Convention involve a determination of whether a species may become threatened with extinction, in order to avoid utilization incompatible with its survival.

The Service received numerous comments recommending that the United States submit an alternative to the Standing Committee draft resolution. Several comments provided detailed analyses of the IUCN submission to the Secretariat, and of the resolution submitted to the Parties prior to the 31st meeting of the Standing Committee. These comments were taken into consideration by the Service and other Federal agencies.

The United States stresses that a large number of versions of listing criteria will be available to the Parties at the outset of COP9 (submitted by the Standing Committee, United States, Animals and Plants Committee, IUCN/WWF, NRDC, and possibly others) and looks forward to discussing this complex yet important topic with the other CITES Parties. The United States regrets that its proposed criteria for Annexes 1 and 2, submitted on June 10, 1994, were not able to be circulated by the Secretariat to the Parties until October 12, 1994, and is concerned that Parties that have not been involved with this process through the Standing, Animals, or Plants Committees may be disadvantaged.

27. Inclusion of Species in Appendix III (Doc. 9.59)

Negotiating Position: The United States supports most of the provisions of the resolution drafted by the Animals Committee that: repeals older resolutions regarding Appendix III listings; proposes newer criteria and guidelines; and recommends that Parties withdraw from Appendix III any listed species that do not meet these criteria. However, the United States disagrees with some aspects of the draft resolution, shares concerns raised by the Secretariat, and encourages further discussion of this issue at the COP.

Information and Comments: Comments were received by DOW and HSUS. DOW agrees with the U.S. position that Appendix III listings should be made more judiciously, but believes that the resolution contained in Doc. 9.59 goes too far in restricting the Parties' existing rights under the treaty. It maintains that the proposed language would in effect bar a listing that is intended to prevent illegal trade before it has occurred. It argues that the proposed resolution would undermine the precautionary approach and protective goals of the treaty and would unduly limit the Parties' current rights under the treaty to use Appendix III simply as a vehicle for monitoring trade thought to be potentially problematic. It urges the United States to modify its position either by opposing proposed Doc. 9.59 in its current form or by actively seeking amendments that would address problems with the document. HSUS strongly disagrees with the U.S. position and does not believe that implementation or enforcement of the Convention will be enhanced by greater restrictions on the use of Appendix III. It maintains that the requirements in the resolution are stricter than those in the text of the treaty and places a burden of proof on Parties to demonstrate that illegal trade is taking place before they can place species on Appendix III. It argues that this provision is unnecessarily restrictive, not precautionary, and will hinder rather than enhance the objectives of the Convention. The United States agrees that Article II paragraph 3 of the treaty does not allow for limiting inclusion in Appendix III to species for which illegal trade is a problem. Parties can include species in Appendix III for the purpose of preventing or restricting exploitation and requiring the cooperation of other countries, even if illegal trade is not currently a factor. The Secretariat has noted that it cannot implement the draft resolution as written, since it limits the rights of Parties and the Secretariat's obligations under the treaty. The United States agrees, and will work with the Parties at COP9 to seek modifications to the document.

Rationale: The United States supports the intent of this resolution as a means of allowing more effective cooperation by importing CITES Parties, reducing administrative burdens, and improving the credibility of Appendix III listings. The United States is supportive of

urging a more judicious use of Appendix III, and recommending direct consultation with the Animals or Plants Committee and a review of existing Appendix III listings. The CITES Secretariat has been working to screen Appendix III proposals and consult with the submitting Party.

28. Guidelines for Evaluating Marine Turtle Ranching Proposals (Doc. 9.42)

Negotiating Position: Portions of the draft guidelines in the Animals Committee proposal are unacceptable to the United States, although others are acceptable.

Information and Comments: Comments were received from Greenpeace, CMC, MTSG, IWMC, and HSUS. Greenpeace recommended at the public meeting on September 14, 1994 that the United States oppose the guidelines as written. The CMC commented at the September 16, 1994 public meeting and expressed its opposition to the draft guidelines, and called for strong regional management plans along with good trade controls. In their written comments, CMC urged the United States to oppose the draft resolution unless it is revised to address regional management plans and trade controls. They contend that the draft guidelines do not meet the requirements of Conf. 3.15 for benefits to the conservation of local populations. CMC faults the Standing Committee for not addressing these issues; the Service notes that it was the Animals Committee and not the Standing Committee that prepared these draft guidelines. In their detailed comments, CMC makes several recommendations, including suggesting that: (1) Ranching criteria should require that the proponents' domestic trade be regulated and controlled before approval by the COP for export; (2) criteria should require establishment of management programs in states throughout the population's range prior to submission to the COP, in recognition that all sea turtle conservation necessitates international cooperative management.

MTSG and HSUS support the need for regional management of sea turtle populations on the basis of genetically defined populations as a precondition for marine turtle ranching. MTSG strongly urges the United States to oppose the resolution in Doc. 9.42 because it does not contain a requirement for regional management, and because the resolution has been weakened from the consensus document produced at the 9th meeting of the Animals Committee. IWMC supports adoption of the proposed marine turtle ranching guidelines, in that they meet the requirements for effective sustainable utilization, but recommends less stringent criteria for proposals involving "doomed" eggs or hatchlings.

Rationale: At COP6 the Parties authorized formation of a Working Group to prepare guidelines for evaluation of marine turtle ranching proposals, although no document was produced for submission to the Parties by that process. The Animals Committee began developing such guidelines after COP8. The United States supports adoption of guidelines that adhere strictly to the requirements of Conf. 3.15, recognize the unique population biology and migratory behavior of marine turtles, and deal effectively with enforcement and implementation concerns. The United States cannot support adoption of the draft guidelines as proposed because they do not recognize that marine turtle populations are migratory, thus necessitating regional cooperation and/or management, and because they substitute mere suggestions of coordination among Parties for solid requirements, including enforcement, regarding most elements of the criteria. The United States participated in a Working Group at the ninth meeting of the Animals Committee in Brussels in September, 1993 which developed draft guidelines for recommendation to the Animals Committee on this issue. The ninth meeting of the Animals Committee adopted a requirement for "regional management on the basis of genetically defined populations", and that trade should be on the basis of fixed quotas between specifically identified countries. The United States strongly supported these elements, which were removed by a subsequent meeting of the Animals Committee, and which the United States believes should be included in some form. The United States remains supportive of regional cooperation in the management of such widely migratory endangered species as marine turtles.

29. Proposals to Register the First Commercial Captive-breeding Operation for an Appendix I Animal Species (Doc. 9.43)

Negotiating Position: The United States supports the registration of the captive-breeding operation for the Asian bonytongue fish (*Scleropages formosus*) on the basis of the species as a whole rather than its three or four recognized color varieties for the first breeding operation, unless there is reason to believe that such a policy could be detrimental to any of the varieties in the wild.

Information and Comments: No comments were received.

Rationale: This popular aquarium fish was listed on Appendix I in 1975, and the Indonesian population was downlisted to Appendix II in 1989 with export quotas under Res. Conf. 5.21. In 1992 the export quota for wild fish was reduced to zero and a quota established for captive-reared fish. The species has at least three color varieties, of which the red form is rarest and commands the highest market price. The first captive-breeding operation for this species, in Malaysia, was approved in part by the Secretariat in 1994, but not for the red variety which does not occur there.

The Secretariat has asked the COP to decide whether captive-breeding operations for the Asian bonytongue fish should be registered on the basis of the species as a whole or its three or four recognized color varieties. Given the likelihood that registering operations on the basis of the whole species will not threaten any of the varieties, and that the techniques to successfully rear or cultivate one variety can be transferred to another variety of the same species, the United States can support this rather than constraining the operators of such facilities by requiring registration by variety. However, the United States recognizes that varieties, especially endemic ones, may have been acquired illegally and thus possibly to the detriment of the species. Therefore, the United States urges the Parties to submit information on a varietal basis and the Secretariat to consider the source of the parental stock in deciding whether the specimens meet Conf. 2.12 standards.

30. Standard Nomenclature (Doc. 9.56)

Negotiating Position: Support adoption of the resolution submitted by the United States, which was submitted at the request of the Nomenclature Committee.

Information and Comments: Comments were received from IHPA at the September 14, 1994 public meeting. IHPA supports the timber nomenclature the United States provided in the resolution and called for standardized terms for different types of specimens of timber.

Rationale: This resolution was submitted at the request of the CITES Nomenclature Committee, and deals with nomenclature and taxonomy of CITES species. The resolution submitted was discussed and agreed upon by the Nomenclature Committee at its May, 1994 meeting in Beijing, China. The names of the genera and species of several families are in need of standardization and the current lack of

a standard reference with adequate information creates an implementation problem for some species. The United States also recognizes that the taxonomy used in the Appendices to the Convention will be more useful to the Parties if standardized and correlated by nomenclatorial references.

This resolution makes several recommendations dealing with the inclusion of subspecies in the Appendices, use of references in proposals, synonyms, and the role of the Scientific Authorities in nomenclature issues. The resolution also recommends several standard references for species listed in the CITES Appendices, for mammals, birds, amphibians, cacti, cycads, tree ferns, and other plants.

XV. Consideration of Proposals for Amendment of Appendices I and II

The **Federal Register** notice published on September 6, 1994 (59 FR 46023) set forth summaries of the proposed U.S. negotiating positions on the proposals for amendment of the CITES Appendices for COP9 and requested information and comments from the public on these proposed U.S. positions. The Service intends to publish the U.S. negotiating positions on the proposals in a separate **Federal Register** notice before the start of COP9.

XVI. Conclusion of the Meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties

Negotiating Position: No documents have been received indicating requests from possible host governments. Favor holding COP10 in a country where all Parties will be admitted without political difficulties. Support the holding of COPs on a biennial basis, or, as in the case of COP9, after an interval of two and one half years.

Information and Comments: No comments were received.

Rationale: COP meetings energize governmental and nongovernmental organizations concerned with CITES issues to examine its implementation, and the conservation of affected species. The United States recognizes that the financial burdens of hosting a COP may serve to discourage developing countries from offering to serve as host, unless innovative ways can be found to provide financial assistance.

General comments: HSUS noted that transmission of documents by the CITES Secretariat has been "unjustifiably slow", which will not provide Parties or NGOs with ample time to study the documents. HSUS requests the right to comment on those documents at a later time. HSUS also noted that an international NGO, the World Conservation Union (IUCN) received copies of all proposals and resolutions long before even the Parties did. The United States agrees that this is a concern, which it will discuss with the Secretariat and the Standing Committee. HSUS recommends additional funding be made available to the Secretariat from translators and document copying services, prior to COP10.

Author: This notice was prepared by Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2095).

Dated: November 3, 1994.

Mollie Beattie,

Director.

[FR Doc. 94–27630 Filed 11–3–94; 2:24 pm]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–796053

Applicant: Dr. Donald L. Koehler, S.A. Garza Engineers, Inc., Austin, Texas

The applicant requests a permit to include take activities for the black-capped vireo (*Vireo atricapillus*) and golden-cheeked warbler (*Dendroica chrysoparia*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–27601 Filed 11–7–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–050–1430–01, N–57922]

Proposed Land Use Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and protest period.

SUMMARY: The Proposed White Sides Land Withdrawal Amendment and Environmental Assessment, which analyzes the U.S. Air Force's proposal for the withdrawal of approximately 1,607 hectares (3,972 acres) of public land in Lincoln County, Nevada, is available for public review. This Proposed Amendment addresses the amendment of the Caliente Management Framework Plan and the Nellis Air Force Range Resource Plan. The environmental assessment portion of this document analyzes the impacts that may result in the implementation of the proposed amendment. This document also contains a summary of the public comments received during the scoping period.

DATES: A 30-day public review and protest period begins on November 9, 1994. And protests must be postmarked on or before December 9, 1994.

ADDRESSES: Protests must be filed with the Director (760), Bureau of Land Management, Division of Planning and Environmental Coordination (406 LS), 1849 C Street NW., Washington, DC 20240.

Copies of the Proposed Amendment may be obtained by writing to: Las Vegas District Office, Bureau of Land Management, P.O. Box 26569, Las Vegas, NV 89126. Copies may be picked up in person at the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Gary Ryan, Acting District Manager, at the above Las Vegas address or telephone (702) 647–5000.

SUPPLEMENTARY INFORMATION: The purpose of the withdrawal of the White Sides area is to provide a security and safety buffer to prevent a compromise of national security interests and assets of the adjacent withdrawn Nellis Air Force Range.

The Proposed Amendment may be protested by any person who participated in the planning process, and who has an interest which is or may be adversely affected by the approval of the Proposed Amendment. A protest may raise only those issues which were submitted for the record during the planning process (see 43 CFR 1610.5–5).

Protests must be filed with the National BLM Director at the above Washington, DC, address. All protests must be written and must be postmarked on or before December 9, 1994 and shall contain the following information:

(1) The name, mailing address, telephone number, and interest of the person filing the protest.

(2) A statement of the issue or issues being protested.

(3) A statement of the part or parts of the document being protested.

(4) A copy of all documents addressing the issue or issues previously submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.

(5) A concise statement explaining precisely why the Bureau of Land Management Nevada State Director's decision is wrong.

Upon resolution of any protests, an Approved Plan Amendment and Decision Record (DR) will be issued. The Approved Plan Amendment/DR will be mailed to all individuals who participated in this planning process and all other interested publics upon their request.

Dated: November 2, 1994.

Ann J. Morgan,

State Director, Nevada.

[FR Doc. 94–27608 Filed 11–7–94; 8:45 am]

BILLING CODE 4310–HC–M.

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 29, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 23, 1994.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Pueblo County

Pueblo Mountain in Park 1 mi. S of Co. Rd. 220 on S. Pine Dr. (CO 78) in the San Isabel NF, Beulah vicinity, 94001343

CONNECTICUT

New Haven County

Bigelaw—Hartford Carpet Mills Historic District Roughly bounded by Lafayette St., Hartford Ave., Alden Ave., Pleasant, High, Spring, South and Prospect Sts., Enfield. 94001382

Hamden High School, 2040 Dixwell Ave., Hamden, 94001378

DELAWARE

Kent County

Building 1301, Dover Air Farce Base Dover AFB. E. Dover Hundred, Dover vicinity, 94001377

Star Hill AME Church, Rt. 366 SE of Camden, Camden vicinity, 94001389

Zion African Methodist Episcapal Church, Center St., Camden, 94001388

GEORGIA

Cobb County

Bankston, J.C., Rock House, 901 Industrial Dr., Dobbins Air Reserve Base, Marietta vicinity, 94001387

IDAHO

Ada County

Spaulding, Alman H. and Dr. Mary E., Ranch, 3805 N. Cole Rd., Boise. 94001363

Bannock County

East Side Downtown Historic District Roughly including the 200 and 300 blocks E. Center St., 100 block N. Second Ave. and 100 block S. Second Ave., Pocatello. 94001361

Nez Perce County

Aspasas, James, Hause, 1610 Fifteenth Ave., Lewiston. 94001366

Baath, Frank, House, 1608 Seventeenth Ave., Lewiston. 94001367

Hester, Patrick J. and Lydia, Hause, 1622 Fifteenth Ave., Lewiston. 94001365

Tambylyn, Agnes M., House, 1506 Seventeenth Ave., Lewiston, 94001364

Wyatt, W. R. and Louisa E., Hause, 1524 Eighteenth Ave., Lewiston. 94001362

INDIANA

Clinton County

Young, John, House, 9665 N Co. Rd. 250 E. Geetingsville, 94001348

Dearborn County

Hurlbert, Lewis, Sr., Hause, 412 Fifth St., Aurora, 94001350

Elkhart County

St. John's Lutheran Church, Jct. of Co. Rds. 15 and 32, NE corner, Goshen vicinity. 94001349

Hancock County

County Line Bridge, Co. Rd. 900 E over Big Blue R., Morristown vicinity. 94001356

Lake County

Gary Bathing Beach Auditorium, One Marquette Dr., Marquette Park, Gary, 94001354

Gary City Center Historic Districts, Roughly, Broadway fram the Chicago, Sauth Shore and South Bend RR tracks to 9th Ave., Gary, 94001352

Gary Public Schaals Memorial Auditarium, 700–734 Massachusetts St., Gary, 94001356

Orange County

Paali Historic District, Roughly bounded by W. Fifth, Railroad and NE. Third Sts. and Lick Cr., Paoli, 94001355

Owen County

Owen Caunty Courthouse, Courthouse Sq., Spencer, 94001351

KENTUCKY

Hardin County

Fart Sands, Off I–65 of Lebanon Junction, above the CSX RR trestle over Sulfur Fork, Lebanon Junction vicinity, 94001379

Kenton County

Yeager, William A., and Edward Mohr Farmstead, 5002 Madison Pike, Indepencence vicinity, 94001380

Rowan County

Marehead State University, Bounded by University Blvd., Battson Ave. and Ward Oates Dr., Morehead, 94001381

MARYLAND

Baltimore Independent City

Faust Brathers Building (Cast Iran Architecture of Baltimore MPS), 307–309 W. Baltimore St., Baltimore, 94001383

MINNESOTA

Hennepin County

Twin City Rapid Transit Campany Steam Pawer Plant, 12–20 Sixth Ave. SE., Minneapolis, 94001385

Houston County

Jeffersan Graine Warehouse, Off MN 26, Jefferson Township. Jefferson vicinity. 94001386

Waseca County

Bailey, Phila C., House, 401 2nd Ave. NE., Waseca, 94001384

NEW YORK

Albany County

Ten Eyck, Tobias, House and Cemeteries, Old Ravena Rd. (Pictuay Rd.) N of jct. with US 9W, Coeymans, 94001375.

Columbia County

Witbeck, William A., House, Co. Rd. 26A. E of jct. with Gibbons Rd., Stuyvesant, 94001371

Delaware County

Hardenbergh, Isaac, House, NY 23 N of jct. with William Lutz Rd., Roxbury, 94001369

Madison County

Smithfield Presbyterian Church, Pleasant Valley Rd. between Elizabeth and Park Sts., Peterboro, 94001370

Ulster County

Camp Wapanachki, S. Plank Rd. (Old Co. Rt 28) at jct. with Miller Rd., Shandaken, Mt. Tremper, 94001372

DuBois—Deyo House, 437 Springtown Rd., Rosendale, 94001374

Westchester County

Romer—Van Tassel House, 212 Saw Mill River Rd., Greenburgh, 94001373

SOUTH DAKOTA

Brule County

Crawford, Robert A., House, 204 16th Ave. W., Chamberlain, 94001392

Minnehaha County

Milne, William G., House, 508 E. 9th St., Dell Rapids, 94001391

Sioux Falls Downtown Historic Districts, Roughly bounded by S. Dakota and S. First Aves., W. Ninth and W. Fourteenth Sts., Sioux Falls, 94001393

Moody County

Japanese Gardens Dance Pavilion, City Park, Flandreau, 94001390

TEXAS

Denton County

Jones Farm, Johnson Branch Park, Lake Ray Roberts, Sanger vicinity, 94001357

Tarrant County

Woolworth, F.W., Building, 501 Houston St., Fort Worth, 94001359

UTAH

Utah County

Johnson—Hansen House, 485 E. 400 South, Provo, 94001346

Wasatch County

Midway Town Hall, 120 W. Main St., Midway, 94001347

WEST VIRGINIA

Berkeley County

Smoketown School, Co. Rt. 45/4, E of Martinsburg, Martinsburg vicinity, 94001345

Tomahawk Spring, Co. Rt. 7/2, Tomahawk, 94001344

WISCONSIN

Portage County

Hardware Mutual Insurance Companies Building, 1421 Strongs Ave., Stevens Point, 94001358

Winnebago County

Algoma Boulevard Historic District, Roughly, Algoma Blvd. from Woodland Ave. to Hollister Ave., Oshkosh, 94001368.

[FR Doc. 94–27627 Filed 11–7–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–671–674; Final]

Silicomanganese From Brazil, the People's Republic of China, Ukraine, and Venezuela; Notice of Commission Determination to Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of the Brazilian and Ukrainian respondents in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for November 3, 1994, *in camera*. The *in camera* portion of the hearing will be limited to discussion of (1) the condition of the domestic industry; and (2) "swap" transactions in the U.S. silicomanganese market. The remainder of the hearing will be open to the public. The Commission has further unanimously determined that the 7-day advance notice of the change to a meeting was not possible.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3090. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that good cause exists in these investigations to hold a short portion of the hearing *in camera*. The majority of the information collected by the Commission with respect to the condition of the domestic industry is business proprietary information (BPI) because there is only one domestic producer. Moreover, any discussion of the role of "swap" transactions in the U.S. silicomanganese market implicates the confidential business practices of individual companies. The *in camera* portions of the hearing will be for the purpose of addressing BPI as part of the parties' presentations, and therefore is properly the subject of an *in camera* hearing pursuant to Commission Rule 201.36(b)(4). *See* 19 C.F.R. § 201.36(b)(4). In making this decision, the Commission nevertheless reaffirms its belief that, whenever possible, its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition the hearing will include *in camera* sessions for short presentations by petitioner and by respondents with questions from the Commission with respect to BPI submitted by the parties, as necessary. For the *in camera* portions of the hearing, the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO), and who are included on the Commission's APO service list in these investigations. *See* 19 C.F.R. § 201.35(b)(1),(2). In addition, if petitioner's BPI will be discussed in the *in camera* session, personnel of petitioner also may be granted access to the closed session. *See* 19 C.F.R. § 201.35(b)(1),(2). In the alternative, if a particular respondent's BPI will be discussed in the *in camera* session, personnel of that respondent also may be granted access to the closed session. *See* 19 C.F.R. § 201.35(b)(1),(2). All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

AUTHORITY: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. § 201.39) that, in her opinion, a portion of the Commission's hearing in *Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela*, Inv. Nos. 731–TA–671–674 (Final), may be closed to the public to prevent the disclosure of business proprietary information.

By order of the Commission.

Issued: November 2, 1994

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27561 Filed 11–7–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32195]

Southern Electric Railroad Company—Construction Exemption—Effingham County, GA

The Southern Electric Railroad Company (SER) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 2.5 mile rail line in Effingham County, Georgia. The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA). Based on the information provided and the environmental analysis conducted to

date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring Southern Electric Railroad Company to implement the mitigation contained in the EA. The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making its final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of John O'Connell (202) 927–6228. Requests for copies of the EA should also be directed to Mr. O'Connell.

Date made available to the public: November 4, 1994.

Comment due date: December 5, 1994.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 94–27658 Filed 11–7–94; 8:45 am]

BILLING CODE 7035–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Committee on Long Range Planning

AGENCY: Judicial Conference of the United States; Committee on Long Range Planning.

ACTION: Request for public comment. Notice of open hearings.

SUMMARY: The Committee on Long Range Planning has proposed a long range plan for the federal courts and submits the proposed plan for public comment The committee requests that all comments be submitted no later than December 16, 1994. To request a copy of the plan send a self-addressed mailing label to: Long Range Planning Office, Administrative Office of the United States Courts, Washington, D.C. 20544, Telephone (202) 273–1810.

In order that persons and organizations wishing to do so may comment on the proposed long range plan, hearings will be held by the Committee on Long Range Planning as follows:

Date: December 7, 1994.

Place: Courtroom No. 2 (Seventh Floor), United States Courthouse, 230 North First Avenue, Phoenix, Arizona.

Date: December 9, 1994.

Place: Media Auditorium, Thurgood Marshall Federal Judiciary Building, 1 Columbus Circle, N.E., Washington, D.C.

Date: December 16, 1994.

Place: Ceremonial Courtroom, Everett McKinley Dirksen Courthouse, 219 South Dearborn Street, Chicago, Illinois.

Each hearing will start at 9:00 a.m. Oral testimony will be held to ten minutes plus a short question-and-answer period at the committee's discretion. Anyone interested in testifying at a particular hearing should contact Peter G. McCabe, Assistant Director, Administrative Office of the United States Courts, Washington, D.C. 20544 for scheduling at least 10 days before the hearing.

Written testimony for each hearing should be received by the Long Range Planning Office no later than 7 days before the hearing.

Public comment may also be submitted without testimony at a hearing. Those submitting written comments, including testimony for a public hearing, may submit documents of any length but *must* include an executive summary. An executive summary should contain the following: Name, title, date, Group represented, Hearing date (if applicable), Chapter, section of long range plan being reviewed, Summary of comments.

The committee prefers that written text be submitted on floppy diskette in either Macintosh Word 5.1 or DOS-compatible WordPerfect 5.1 format. All comments should be sent no later than December 16, 1994.

Dated: October 31, 1994.

Peter G. McCabe,

Assistant Director, Judges Programs.

[FR Doc. 94–27560 Filed 11–7–94; 8:45 am]

BILLING CODE 2210–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) School Crime Supplement
(2) a. National Crime Victimization Survey, Redesign Phase III, Basic Screen Questionnaire, Form NCVS 1(X).
b. Crime Incident Report, Redesign Phase III, National Crime

Victimization Survey, Form NCVS 2(X).
c. Noninterview Record, Redesign Phase III, National Crime Victimization Survey, Form NCVS 7(X).
d. Phase III, Control Card, National Crime Victimization Survey, Form NCVS 500(X).

Bureau of Justice Statistics.
(3) Quarterly.
(4) Individuals or households. The School Crime Supplement is a program designed to gather, analyze, publish, and disseminate information on crimes that occur in school. Respondents include students between the ages of 12 through 19 who are living in 58,000 households throughout the United States.
(5) 17,000 annual respondents at .167 hours per response.
(6) 2,839 annual burden hours.
(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: November 3, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–27657 Filed 11–7–94; 8:45 am]

BILLING CODE 4410–18–M

Antitrust Division

U.S. v. Motorola, Inc. & Nextel Communications, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, a Stipulation, and a Competitive Impact Statement have been filed in the United States District Court for the District of Columbia in *United States* v. *Motorola, Inc. and Nextel Communications, Inc.*, Civ. No. 1:94CV02331

The Complaint alleges that the agreement between Nextel and Motorola to transfer control of substantial portions of Motorola's SMR service business to Nextel, both through Nextel's purchase of a substantial portion of Motorola's SMR frequencies and its assumption of management control of most of Motorola's remaining SMR frequencies, violates section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that the two companies are each other's chief competitor and that the agreement between them is likely to substantially reduce competition in fifteen (15) major cities in the United States in the market for trunked SMR services. As a result of the transactions, Nextel would control virtually all of the service alternatives available for persons with a need for trunked SMR services in those cities and would be able to increase the prices of or reduce the quality or availability of such services.

The proposed Final Judgment enjoins Nextel and Motorola from holding or acquiring more than a limited number of 900 MHz channels in fourteen of the cities and requires Nextel and Motorola to divest themselves of channels they hold above that number. Nextel and Motorola are also required to terminate, at the request of the licensee, the management agreements of 900 MHz licensees whose channels they manage. Nextel and Motorola are also required to divest themselves of a certain number of 800 MHz SMR channels in the city of Atlanta, Georgia.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to George S. Baranko, Attorney, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, N.W., Room 8104, Washington, D.C. 20001.

Constance K. Robinson,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Motorola, Inc. and Nextel Communications, Inc., Defendants, Civil Action No. 94–2331.

Stipulation

It Is Hereby Stipulated and Agreed, by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: October 27, 1994.

For the Plaintiff:

Anne K. Bingaman,
Assistant Attorney General.
Steven C. Sunshine,
Deputy Assistant Attorney General.
Constance K. Robinson,
Director of Operations.
Donald J. Russell,
Chief, Telecommunications Task Force.
George S. Baranko,
Katherine E. Brown,
J. Philip Sauntry, Jr.,
Susanna M. Zwerling,
Attorneys, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20002, (202) 514–5640.

For Defendant Nextel Communications, Inc.

Jones, Day, Reavis & Pogue,
By:
Charles A. James,
A member of the Firm, 1450 G Street, N.W., Washington, D.C. 20005, 202–879–3675.

For Motorola, Inc.

David F. Hixson, Esquire,
Vice President and General Attorney, 1303 East Algonquin Road, Schaumburg, Illinois 60196, 708–576–3960.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Motorola, Inc. and Nextel Communications, Inc. Defendants. Civil Action No. 94 3221.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on October 27, 1994; the parties, by their respective attorneys, having consented to the entry of this Final Judgment; and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law; and upon the consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction over the parties and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "Affiliate" means any person in which Motorola or Nextel separately or in combination hold (i) the right, contractual or otherwise, to direct the management decisions, or (ii) an ownership interest of 50 percent or greater, unless defendants do not have the right to direct the management decisions.

B. "Category A City" means any or all of the cities of Boston, Massachusetts; Chicago, Illinois; Dallas and Houston, Texas; Denver, Colorado, Los Angeles and San Francisco, California; Miami and Orlando, Florida; New York, New York; Philadelphia, Pennsylvania; and Washington, D.C.

C. "Category B City" means either or both of the cities of Detroit, Michigan or Seattle, Washington.

D. "Category C City" means the city of Atlanta, Georgia.

E. "Defendants" means Nextel and/or Motorola.

F. "800 MHz channel" means a trunked or conventional channel or frequency pair in the 800 MHz band within a 25 mile radius of the geographic center of Atlanta, capable of being used in providing trunked SMR service in accordance with the Federal Communications Act. Center coordinates are defined in 47 CFR 90.635 and in Federal Communications Commission Public Notice 43004, Private Radio 800 MHz Systems Application Waiting List, released May 27, 1994.

G. "900 MHz channel" means a trunked or conventional channel or frequency pair in the 900 MHz band within a 25 mile radius of the geographic center of any city identified in section II paragraphs B and C, capable of being used in providing trunked SMR service in accordance with the Federal Communications Act. Center coordinates are defined in 47 C.F.R. § 90.635 and in Federal Communications Commission Public Notice 43004, Private Radio 800 MHz Systems Application Waiting List, released May 27, 1994. For the purposes of this Final Judgment, the location of channels shall be determined as of September 1, 1994.

H. "Management agreement" means the SMR Systems Facilities Services Agreement, SMR User Acceptance Agreement and any and all such agreements relating to Motorola's and/or Nextel's management of an SMR license for any licensee.

I. "Motorola"means Motorola, Inc., each affiliate, subsidiary or division thereof, and each officer, director, employee, agent or other person acting for or on behalf of any of them.

J. "Nextel" means Nextel Communications, Inc., each affiliate, subsidiary or division thereof, and each officer, director, employee, agent or other person acting for or on behalf of any of them. Nextel shall include OneComm Corporation as provided for in the Agreement and Plan of Merger dated July 13, 1994 and Dial Page, Inc. as provided for in the letter of intent dated August 5, 1994.

K. "Person" means any natural person, corporation, association, firm, partnership or other legal entity.

L. "SMR infrastructure equipment" means equipment (e.g., switches, transmission equipment, and radio base stations) used by an SMR service provider in or for the provision of SMR service anywhere in North America and includes related software, maintenance and support and other equipment, products or services used to provide SMR service.

M. "Specialized Mobile Radio System" or "SMR" means a radio system in which licensees provide land mobile communication services (other than radio-location services) in the 800 MHz and 900 MHz bands on a commercial basis as defined and regulated in 47 C.F.R. Part 90.

III

Applicability

A. The provisions of this Final Judgment shall apply to defendants, to each of their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV

Prohibited Conduct

Defendants are enjoined and restrained as follows:

A. Defendants as a group may not hold or acquire licenses for more than thirty (30) 900 MHz channels in any Category A City or more than ten (10) 900 MHz channels in any Category B City without the prior written permission of plaintiff. To the extent that defendants are currently the licensees for more than thirty (30) 900 MHz channels in any Category A City or more than then (10) 900 MHz channels in any Category B City, defendants shall divest fully and completely all licensed channels in excess of the relevant number and sell all SMR infrastructure equipment attributable to the divested channels to a person or persons approved by the plaintiff, provided, however, that the provisions of this Final Judgment shall have effect with respect to frequencies licensed under the authority of a foreign government.

B. Defendants shall not finance any portion of the purchase of any license pursuant to a sale mandated by section IV. paragraph A of this Final Judgment without plaintiff's prior written permission.

C. Except as permitted by paragraph E, defendants shall terminate management agreements relating to all 900 MHz channels in Category A and Category B Cities at the written request of the licensee. Further, defendants are prohibited from exercising, maintaining, enforcing or claiming any right of first refusal to purchase the system, license or operation relating to such channels, and are prohibited from exercising, maintaining, enforcing or claiming any right to select the SMR infrastructure equipment to be deployed on the systems.

D. Except as permitted by paragraph E, defendants are further enjoined and restrained from taking any action to prevent or inhibit a licensee's termination of its management agreement and/or affiliating with a network controlled by a third-party pursuant to section IV. paragraph C, above. Defendants may, however, require a licensee to provide 120 days notice of an intent to exercise its rights under section IV. paragraph C, and may solicit customers of a terminating system to purchase defendants' services. Nothing in this paragraph shall impose any express or implied duty on the part of defendants to conduct business with any person.

E. Notwithstanding the provisions of section IV. paragraphs C and D, above, defendants may (1) refuse to terminate a management agreement, (2) exercise, maintain, enforce or claim a right of first refusal to purchase, or (3) exercise, maintain, enforce or claim a right to select the SMR infrastructure equipment used by a 900 MHz channel in a Category A City when, including that channel, the defendants as a group control by license and by management agreement, combined, thirty (30) or fewer 900 MHz channels in that city. Further, defendants may (1) refuse to terminate a management agreement, (2) exercise, maintain, enforce or claim a

right of first refusal to purchase, or (3) exercise, maintain, enforce or claim a right to select the SMR infrastructure equipment used by a 900 MHz channel in a Category B City when, including that channel, the defendants as a group control by license and by management agreement, combined, ten (10) or fewer 900 MHz channels in that city.

F. Defendants shall fully and completely divest forty-two (42) 800 MHz channels in the Category C City to a person or persons approved by the plaintiff. Defendants shall have the full discretion to designate the frequencies to be divested. The divestitures required by this paragraph shall be contingent upon closing of the transaction contemplated by the letter of intent between Nextel and Dial Page, Inc., dated August 5, 1994.

G. Defendants are enjoined and restrained from entering into new management agreements for 900 MHz channels in any Category A or Category B Cities, except to channels owned or managed by defendants as of August 4, 1994, without the prior written permission of plaintiff. Defendants are further enjoined and restrained from holding or acquiring, either directly or indirectly, more than a five percent ownership interest in any corporation or entity that itself owns, controls, or manages, either directly or indirectly, 900 MHz channels in any Category A or B Cities without the prior written permission of the plaintiff unless the corporation's or entity's ownership, control or management of 900 MHz channels in combination with that of defendants is less than or equal to thirty (30) 900 MHz channels if a Category A city and ten (10) 900 MHz channels if a Category B city.

H. For purposes of complying with the provisions of section IV. paragraphs A through F, defendants shall share information and enter agreements to the extent reasonably necessary to effect the allocation between them with respect to 900 MHz channels they will continue to license under the relevant number limit.

I. Defendants shall take all reasonable steps to complete the required divestitures no later than 180 days after entry of this Final Judgment. Defendants shall provide plaintiff notice when the divestitures have been completed in accordance with the terms of this Final Judgment with respect to each city. In its sole discretion, plaintiff may extend the date by which defendants are required to divest rights in 900 MHz frequencies; provided however, that plaintiff shall extend the divestiture period to accommodate proceedings by the Federal Communications Commission with respect to the transfer of any divested license.

J. Until the divestitures required by this Final Judgment have been accomplished, defendants shall refrain from taking any action that would jeopardize the economic viability of properties to be divested.

V

Agent

A. If defendants have not completed the required divestitures within 180 days of entry of this Final Judgment, the Court shall, upon application of the plaintiff, appoint an agent to effect the mandated sales. After the agent's appointment becomes effective, defendants immediately shall identify specific frequencies to be divested. Thereafter, only the agent, and not the defendants, shall have the right to sell excess licensed channels. The agent shall have the power and authority to effectuate the mandated sales at such price and on such terms as are then obtainable by the agent, to a purchaser acceptable to the plaintiff, subject to the provisions of this Final Judgment. The agent shall have such other powers as the Court deems appropriate. Defendants shall use all reasonable efforts to assist the agent in accomplishing the required sales. Defendants shall not object to a sale by the agent on any grounds other than malfeasance. Any such objection by defendants shall be conveyed to plaintiff and to the agent within fifteen (15) days after the agent has notified defendants of a proposed sale.

B. The agent shall be a business broker with experience and expertise in the disposition of telecommunications properties. Plaintiff shall provide defendants with the names of not more than two nominees for the position of agent for the required divestiture. Defendants will notify plaintiff within five days thereafter whether either or both such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person or persons upon whom the parties have agreed and the Court shall appoint one of the nominees as agent. If neither of such nominees is acceptable to defendants, defendants shall furnish to plaintiff within five days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two nominees for the position of agent for the required divestiture. Plaintiff shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as agent.

C. The agent shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of channels and all costs and expenses so incurred.

D. The agency shall have full and complete access to the personnel, books, records, and facilities of the defendants relevant to excess licensed channels and the defendants shall develop such financial or other information relevant to the channels to be sold as the agent may request. Defendants shall take no action to interfere with or impede the agent's accomplishment of the sale and shall use their best efforts to assist the agent in accomplishing the required sale.

E. After his or her appointment, the agent shall file monthly reports with the parties and the Court setting forth the agents' efforts to accomplish divestitures contemplated under this Final Judgment. If the agent has not accomplished such divestitures within six months after the agent's appointment, the agent shall thereupon promptly file with the Court a report setting forth (1) the agent's efforts to accomplish the required divestitures, (2) the reasons, in the agent's judgment, why the required divestitures have not been accomplished, and (3) the agent's recommendations. The agent at the same time shall furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the agency, which shall include, if necessary, extending the term of the agency and the term of the agent's appointment.

VI

Sanctions

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against defendants or any person any relief available under any applicable provision of law.

VII

Plaintiff Access

A. To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the

Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendant's office hours to inspect and copy all records and documents in their possession or control relating to any matters contained in this Final Judgment; and

2. to interview defendants' officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to defendants' reasonable convenience and without restraint or interference from defendants.

B. Upon written request of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

C. No information or documents obtained by the means provided in this section VII shall be divulged by plaintiff to any person other than a duly authorized representative of the executive branch of the United States or a duly authorized representative of the Federal Communications Commission, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Further Elements of Decree

A. Defendants shall provide each licensee subject to a management agreement with a copy of this Final Judgment and notice of their rights under this Final Judgment in a form approved by plaintiff within seven days of the date this Final Judgment is entered.

B. This Final Judgment resolves issues with respect to: (1) defendants' consummated and proposed acquisitions of 800 MHz channels in the continental United States and Canada; (2) proposed mergers and acquisitions between Nextel, OneComm Corporation and Dial Page, Inc.; and (3) agreements between and among the defendants as of August 4, 1994 with respect to the financing and construction of SMR systems. Nothing in this Final Judgment, expressly or by implication, is intended to affect defendants' activities except as specifically required herein.

C. This Final Judgment shall expire ten years from the date of entry.

D. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to publish violations of its provisions.

E. Five years after the entry of this Final Judgment, any party to this Final Judgment may seek modification of its substantive terms and obligations, and neither the absence of specific reference to a particular event in the Final Judgment, nor the foreseeability of such an event at the time this Final Judgment was entered, shall preclude this Court's consideration of any modification request.

The common law applicable to modification of final judgments is not otherwise altered.

F. Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Motorola, Inc. and Nextel Communications, Inc. Defendants.

Case Number 1:94CV02331
Judge: Thomas F. Hogan
Deck Type: Antitrust
Date Stamp: 10/27/94

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA") or "Tunney Act"), 15 U.S.C. 16 (b)–(h), the United States, submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against Nextel Communications, Inc. ("Nextel") and Motorola, Inc. ("Motorola") in this civil antitrust proceeding.

I

Nature and Purpose of Proceeding

On October 27, 1994, the United States filed a civil antitrust complaint, under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, against Nextel and Motorola, alleging that an agreement between Nextel and Motorola violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. That agreement would transfer ownership of a substantial portion of Motorola's specialized mobile radio ("SMB") business to Nextel and control of most of Motorola's remaining SMR business.

The complaint alleges that the Nextel/Motorola transactions are likely to reduce competition substantially in fifteen (15) major cities in the United States in the market for "trunked SMR services." SMR service is a form of dispatch service that enables a customer to communicate with a fleet of vehicles, such as delivery trucks, repair trucks and messenger services. SMR service also enables a vehicle to communicate with another member of the fleet. The transactions would allow Nextel to control virtually all the service alternatives available for persons with a need for trunked SMR services in those cities and increase the prices of or reduce the quality of such services. The complaint seeks, among other relief, to enjoin the combination of Nextel's and Motorola's trunked SMR operations and thereby to preserve competition in the relevant markets.

On October 27, 1994, the United States, Nextel and Motorola filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the transactions. Under the proposed Final Judgment, Nextel and Motorola will divest themselves of substantially all of their SMR channels in the 900 MHz radio band and release upon request of the license holder substantially all the 900 MHz SMR channels they manage in the cities of Boston, Massachusetts; Chicago, Illinois; Dallas and Houston, Texas; Detroit, Michigan; Los Angeles and San Francisco, California; Miami and Orlando, Florida; New York, New York; Philadelphia, Pennsylvania; Seattle, Washington; and Washington, DC. In addition, Nextel's and Motorola's freedom in the future to acquire 900 MHz channels in these cities and in Denver, Colorado would be significantly constrained. In Atlanta, Georgia, either Nextel or Motorola will sell 42 800 MHz channels to an independent SMR service provider.

The United States, Nextel and Motorola have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction of construe, modify, and enforce the proposed Final Judgment and to punish violations of the Judgment.

II

Facts Giving Rise to the Alleged Violation

A. Product Market

SMR service is a type of land mobile communications service used by customers such as contractors, service companies and delivery services that have significant field operations and

need to provide their personnel with the ability to communicate directly with each other, either on a one-to-one or one-to-many basis. This type of service is commonly referred to as "dispatch" service. SMR service is provided pursuant to licenses granted by the Federal Communications Commission in the 800 MHz and 900 MHz radio bands.[1]

SMR services may be "conventional" or "trunked." Conventional SMR service is a method of operation in which one or more radio frequency channels are assigned to mobile and base stations on a non-exclusive, first come, first served, basis. Users listen to hear if the channel is being used by others and wait until other conversations on the channel are completed before using it themselves. Trunked SMR service allows a number of customers to share a number of channels by electronically assigning a channel to a customer when he or she wishes to use the system. Trunked SMR service affords customers greater privacy and more reliable channel availability than conventionally service.

SMR systems have historically utilized high-elevation based stations to receive signals from transmitting radios, to allocate the signals among available channels and to transmit the enhanced signal to the intended recipients. In this deployment, SMR base stations have had a broad range, allowing users to communicate within the area of broadcast. An 800 MHz SMR system will generally broadcast throughout the entire area of the license, which covers a radius of 35 miles from the base station transmitter. A 900 MHz SMR system will cover a designated filing area as defined in 52 FR 1302 (January 12, 1987). In contrast, cellular telephone companies "reuse" spectrum by dividing a licensed service area into "cells" and reusing a frequency within the same system. Several cells would have to be used to transmit a communication to reach a group of vehicles; consequently, this method of operation is not well suited for SMR customers who need the capability of sending frequent, short messages over a broad area to one or to many recipients. Moreover, the FCC prohibits cellular companies from providing one-to-many dispatch service.

The FCC initially allocated 280 800 MHz channels for trunked SMR service in every market.[2] In 1988 the FCC allocated an additional 200 900 MHz channels to trunked SMR services in 50 major cities across the country where allocated 800 MHz channels appeared inadequate to meet consumer demand for SMR service. In a few markets the FCC has taken back some 900 MHz channels because of the failure of licensees to construct their systems. Recently, the FCC has announced plans to auction the 900 MHz SMR spectrum it has taken back and the 900 MHz spectrum in markets where it had not previously been allocated. Even though the mobile radios used on 800 MHz and 900 MHz systems are not compatible with each other, 800 MHz and 900 MHz systems provide interchangeable service.

In 1991 the FCC announced its intent to allocate channels in the 220 MHz bandwidth for SMR services. The FCC allocated 100 channels for non-nationwide trunked use including private systems and SMR systems. Initiation of SMR service in the 220 MHz band, however, was delayed by litigation which was settled in March 1994. The delays led the FCC to extend the time holders of 220 MHz licenses had to construct their systems until April 4, 1995. If the systems are not constructed by that date, the licenses will revert to the FCC.

SMR service in the 220 MHz band will be a substitute for SMR services in the 800 MHz and 900 MHz bands at some point in the future. At present, however, the only constructed 220 MHz SMR systems are in California. Systems are planned for, among other cities, Atlanta, Boston, Chicago, Dallas, Houston, Los Angeles, New York, Philadelphia, San Francisco, and Washington DC, but the scope of expected implementation varies by city. Further, 220 MHz service will require some time to gain commercial acceptance, just as 800 MHz and 900 MHz services required when they were first implemented. As a result, when 220 MHz systems are constructed, they will not adequately discipline the parties' control of 800 MHz and 900 MHz systems in the 15 cities.

The product market consists of trunked SMR service in the 800 MHz, 900 MHz and 220 MHz bands. Conventional dispatch service is not a substitute for trunked SMR service because it affords lesser privacy and lower reliability. Cellular telephone service is not a substitute because it is significantly more expensive than SMR service, is significantly more difficult for customers to restrict communications to a defined fleet or group, and because it cannot be provided on a one-to-many dispatch basis.

B. Geographic Market

SMR channels in the 800 MHz band are licensed by the FCC for a 35 mile radius from a specific location. Subsequent applicants for licenses may apply for the same channel if they protect the coverage area of the first licensee. Channels in the 900 MHz band are licensed for designated filing areas, which generally approximate metropolitan statistical areas.

SMR service providers seek to place their broadcast antennas in locations that will afford their users geographic coverage that will correspond to the area served by their fleet of vehicles. Consequently, frequently used sites include centrally located skyscrapers and mountains that shadow metropolitan areas, such as Stone Mountain outside Atlanta. Antenna sites are also placed to ensure coverage of high traffic areas, particularly downtown areas and important traffic arteries.

The geographic markets consist of the license areas in which the FCC has authorized the provision of SMR service. In any particular city, the geographic market can be considered to include the twenty-five mile radius from city center because SMR service providers must be able to cover the high-traffic downtown area.

C. Developments in the 800 MHz Band

The FCC's early licensing policies of 800 MHz spectrum led to an industry of many small SMR service providers. Applicants could apply for up to five trunked channel pairs per market. To retain channels, an SMR provider had to build its facilities within one year and meet certain loading requirements. Trunked SMRs were required to be "loaded" to 70 radio units per channel within five years. Systems not meeting the standards would have unloaded channels reassigned to applicants on a waiting list. Initially, the FCC limited radio equipment manufacturers, like Motorola, to one 20 channel trunked system nationwide.

[1] The regulations allocating the spectrum and governing its use are contained in 47 CFR Part 90, Subpart S, §§ 90.601–90.659. A similar service is provided in the 220 MHz band, as discussed below.

[2] More than 280 800 MHz channels are currently being used for trunked SMR service in some cities through "intercategory sharing." Regulations permit SMR licensees to include in their SMR systems unallocated channels assigned to industrial, land transportation or other private dispatch use in the 800 MHz band under certain conditions. In metropolitan areas where all 800 MHz channels have been allocated, intercategory sharing involves an agreement between an SMR service provider and a license holder of a channel allocated to one of these other service categories. In exchange for providing trunked SMR service to the industrial or other licensee, the SMR service provider is able to use the remaining capacity of the channel in its commercial SMR operations. Most private systems, however, utilize virtually all of the capacity of their channels and are unwilling to participate in intercategory sharing arrangements.

The FCC permitted Motorola and others to manage licenses held by other persons in exchange for a percentage of the revenues of the operation. Such "Management" agreements commonly assign the managing company responsibility for daily operations, grant the managing company the right to select the type of infrastructure equipment to be deployed by the system, and grant the managing company a right of first refusal in the event the licensee receives an offer to purchase the system. While the FCC requires that management agreements technically leave control of the operations in the hands of the licensee, managing companies generally have effective control of the channels they manage.

In the last five years Nextel has become the primary supplier of trunked SMR services in the United States through its acquisition of dozens of small SMR companies, principally in the 800 MHz band. Nextel has also assumed responsibility for many contracts providing for the management of SMR licenses held by others.

Nextel recently moved to establish a nationwide presence in the 800 MHz band through its agreements of July 13, 1994, to acquire OneComm Corporation, which had been accumulating 800 MHz spectrum in sixteen Western states, and of August 5, 1994 to acquire Dial Page, Inc., which had been accumulating 800 MHz spectrum in twelve Southeastern states. As a result, Nextel controls far more 800 MHz SMR channels in the United States than any other company. It also owns or manages a large number of 900 MHZ SMR channels in cities across the United States.

Nextel's numerous acquisitions of 800 MHz SMR service providers are part of a plan to replace the currently deployed analog technologies in those systems with the new Motorola Integrated Radio System ("MIRS") digital technology developed by Motorola. The technology will be deployed in a multi-site configuration, much like that employed by cellular services providers. Use of digital technology and frequency re-use on Nextel's 800 MHz channels will greatly increase each system's capacity and, Nextel believes, allow it to implement a variety of services, including a more reliable and better quality telephone interconnect service that would compete with the cellular providers, and to continue as a dispatch service provider in the market it serves.

Motorola is the second largest provider of trunked SMR services in the United States. It owns or manages a substantial number of 800 MHz and 900 MHz channels it has used to provide trunked SMR services.

On August 4, 1994, Motorola and Nextel signed an agreement providing that Motorola would sell and Nextel would buy Motorola's 800 MHz SMR business, including both owned (licensed) and managed channels. The agreement also provided that Nextel would manage Motorola's 900 MHz SMR business for three years; the agreement can be renewed for subsequent periods of two years. In return for its SMR business, Motorola would receive twenty-four percent (24%) of Nextel's voting securities. By agreements entered into the same day, Nextel committed to purchase Motorola equipment for its 800 MHz SMR business.

D. Harm to Competition Resulting from the Transactions

The combination of Nextel's and Motorola's owned and managed 800 MHz SMR channels as well as the parties' owned and managed 900 MHz channels would result in Nextel holding virtually all of the SMR spectrum in the markets of Atlanta, Georgia; Boston, Massachusetts; Chicago, Illinois; Dallas and Houston, Texas; Denver, Colorado; Detroit, Michigan; Los Angeles and San Francisco, California; Miami and Orlando, Florida; New York, New York; Philadelphia, Pennsylvania; Seattle, Washington; and Washington, DC. As a result of the consolidation, there would be few, if any, alternatives available to SMR customers in those areas, and the combined entity would have the ability to raise prices or reduce the quality or quantity of service.

III

Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the Nextel/Motorola transactions may be substantially to lessen competition in trunked SMR services in the relevant geographic markets in violation of Section 7 of the Clayton Act. The risk to competition posed by the transaction would be substantially eliminated by the relief provided in the proposed Final Judgment which will ensure that alternative trunked SMR service providers will be available in all the relevant geographic markets.

Nextel's planned acquisition of Motorola's 800 MHz channels, following its numerous acquisitions of other SMR service providers, and its planned management of Motorola's 900 MHz SMR services would have the effect of eliminating all but a few suppliers of trunked SMR services in a number of cities in the United States. In San Francisco, for example, within 25 miles of the center of the city, Nextel currently owns or manages approximately 209 800 MHz channels and 42 900 MHz channels. Motorola is the largest remaining provider of SMR services in San Francisco. It owns or manages approximately 45 800 MHz channels and 12 900 MHz channels there. The several other providers of trunked SMR services there currently hold, in total, licenses for approximately 35 800 MHz and 900 MHz channels on which they can provide trunked SMR service. While SMR service providers in the 220 MHz band have not yet completed construction of their systems, approximately half of the licensed 220 MHz channels are likely to be fully available service alternatives within the next two year.[3] Even allowing for entry by 220 MHz operators, the resulting market concentration exceeds the levels the Antitrust Division has generally found to indicate that a transition may be anticompetitive.[4]

Nextel's consolidation of SMR spectrum, however, may enable it to create a third mobile telephone service to compete with established cellular services. The result could be a wider variety of wireless services at a lower cost in the near future. The Department saw substantial benefits to new competition in another market (the cellular telephone market) if Nextel could obtain sufficient capacity at 800 MHz to enable it to enter that market. Thus, the Department decided to limit the relief sought in this action to the 900 Mhz band (with the single exception of Atlanta).

[3] The precise number of 220 MHz channels that will be operational in any particular city within the next two years cannot be determined. It is unlikely that all allocated 220 MHz channels that have been allocated for SMR services will be constructed in that time. However, even if all allocated 220 MHz channels in the fifteen cities are constructed and become operational within the next two years, given the overwhelming dominance of Nextel, those 220 MHz services and the few independent 800 MHz and 900 MHz services will be inadequate, without more, to discipline Nextel's services.

[4] The Antitrust Divison's Horizontal Merger Guidelines provide for the Division to consider the post-merger concentration and the increase in concentration resulting from a merger. The increase in concentration is measured by the Herfindahl Hirschman Index which is calculated by summing the squares of the individual market shares of all the participants. The HHI thresholds are exceeded in each of the 15 cities. Without considering the affect of 220 MHz channels, the HHI is currently greater than 2200 in each city and the transaction will increase the HHI by more than 1400 points. If 220 MHz services are included, the premerger HHI will be more than 1550 in each city and the transaction will increase the HHI by more than 600 points.

MIRS technology cannot be deployed on 900 MHz spectrum, and Nextel's ownership or control of 900 MHz spectrum is not necessary to obtain the benefits of new competition to the cellular companies. Rather, Nextel's ownership and management of a significant portion of 900 MHz spectrum in cities where it will own and manage virtually all of the 800 MHz spectrum services to enhance its power over customers requiring trunked SMR services. Absent judicial intervention, Nextel will be able to raise prices and reduce the quality or quantity of services to such customers and inhabit the deployment of alternative technologies.

The proposed Final Judgment preserves competition for trunked SMR customers by limiting the 900 MHz spectrum Nextel and Motorola will own and control for the next ten years. Nextel and Motorola together will have the power to control, by license and by management agreement, no more than 30 900 MHz channels in Boston, Massachusetts; Chicago, Illinois; Dallas and Houston, Texas; Los Angeles and San Francisco, California; Miami and Orlando, Florida; New York, New York; Philadelphia, Pennsylvania; and Washington, DC.; or 10 900 MHz channels in Detroit, Michigan and Seattle, Washington.[5] Nextel and Motorola would be permitted to continue to own or manage a limited amount of spectrum indefinitely because: (1) Nextel's deployment of its 800 MHz digital mobile network will be facilitated by its control of a limited number of 900 MHz channels to use to transfer customers to the new service; (2) the number of channels required by the decree to be sold or released will be sufficient to permit the entry of new trunked SMR service providers for customers with a need for dispatch services; and (3) excluding Motorola from the 900 MHz band might foreclose its experimentation with new technologies there.

Where Nextel and Motorola together currently own more than the permitted number of 900 MHz channels, the proposed Final Judgment requires that the channels in excess of the permitted amount be sold to a purchaser approved by the plaintiff. If they are unable to complete the sales within 180 days of the entry of the Final Judgment, upon application by plaintiff, the Court would appoint an agent to effectuate the mandated sales.

[5] Nextel and Motorola would be limited to a combined 10 900 in Seattle and Detroit because those are border cities where, by international agreement, only half of the available spectrum may be licensed by the United States.

The proposed Final Judgment also requires that Nextel and Motorola release management agreements relating to 900 MHz channels in affected cities at the request of the licensee unless Nextel and Motorola hold fewer than a specified number of channels in that particular market.[6]

Channels to be divested or released are defined as those within 25 miles of the center point of each relevant city. This is to ensure that would-be competitors are able to secure spectrum in the central city areas where spectrum is most difficult to obtain and must be obtained in order to provide a competitive service.

The proposed Final Judgment prohibits Nextel and Motorola from acquiring, either directly or indirectly, any ownership interest in or entering into new management agreements for 900 MHz channels in affected cities without the plaintiff's prior written permission.[7] The Defendants may, however enter into new management agreements with respect to channels either Motorola or Nextel owned or managed as of August 4, 1994, provided that the new agreements are subject to section IV paragraphs C and D of the proposed Final Judgment. The proposed Final Judgment also prohibits the parties from acquiring, either directly or indirectly, more than a five percent ownership interest in any entity that itself owns, controls, or manages 900 MHz channels in those cities without the prior written permission of the United States, except that prior approval will not be required where the acquisition of ownership will not cause Motorola's and Nextel's combined channel position to exceed applicable thresholds.

In Atlanta, due to the existence of a viable purchaser, the parties are required to divest 42 800 MHz channels to a purchaser or purchasers acceptable to plaintiff.

The United States, Nextel and Motorola have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by either party as to an issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The term of the proposed Final Judgment is 10 years. It provides that the Court retains jurisdiction over this action, and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation and enforcement. Such a request will be subject to common law standards of decree modification for five years after entry of the judgment. Thereafter, a party seeking modification may rely upon events that were known and foreseeable at the time of entry of the proposed Final Judgment, provided the grounds for modification at common law are otherwise met. The parties contemplate that a complete extinguishment of Motorola's relationship with Nextel would be a significant changed circumstance under the decree.

[6] It is possible that Nextel and Motorola may control a greater number of 900 MHz channels in the relevant geographic markets if the licensees of managed systems do not request to be released from their management agreements. In any case, neither Nextel nor Motorola would be able to preclude the licensees from moving their licensed channels to other managers, networks or technologies.

[7] Neither Motorola nor Nextel own or manage any 900 MHz spectrum in Denver, Colorado and much of the 900 MHz SMR channels there reverted to the FCC because the license holders did not construct or load the systems. The proposed Final Judgment addresses the competitive problems in this market by limiting the amount of 900 MHz spectrum the defendants may obtain in the future to 30 channels.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action under the Clayton Act. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The

comments and response(s) of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to George S. Baranka, Attorney, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street NW., Room 8104, Washington, DC 20001.

VI

Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered litigation seeking to limit the number of 800 MHz channels Nextel held in each affected city. The United States rejected that alternative for two reasons: first, it is satisfied that the relief it has obtained relating to 900 MHz frequencies will adequately address the harm to competition alleged in the complaint; second, the Department did not want to inhibit Nextel's ability to offer cellular telephone service.

The United States also considered the desirability of requiring the modification of the ancillary equipment agreements under which Nextel will purchase from Motorola infrastructure and subscriber equipment to construct its digital network. The Untied States rejected that alternative because Motorola's equipment pricing practices are likely to be constrained by those of other wireless equipment suppliers to the cellular service providers and to the personal communications service providers, which are expected to be soon authorized by the FCC.

VII

Standard of Review Under the Tunney Act for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States are subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination,

the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). The courts have recognized that the term "public interest" "take[s] meaning from the purposes of the regulatory legislation." *NAACP* versus *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to "preserv[e] free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* versus *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the Tunney Act is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* versus *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* versus *Waste Management, Inc.*, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[8] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making the public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States versus *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public." *United States* versus *BNS. Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* versus *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[9]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States versus *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed consent decree, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a Final Judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[10]

VIII

Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgments. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Respectfully submitted,

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[8] 119 Cong. Rec. 24598 (1973). *See United States* versus *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[9] *United States* versus *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* versus *BNS, Inc.*, 858 F.2d at 463; *United States* versus *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* versus *Gillette Co.*, 406 F. Supp. at 716. *See also United States* versus *American Cyanamid Co.*, 719 F.2d at 565.

[10] *United States* versus *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C.), *affd sub nom Maryland* versus *United States*, 460 U.S. 1001 (1982) *quoting United States* versus *Gillette Co., supra*, 406 F. Supp. at 716; *United States* versus *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W D Ky 1985).

Dated: October 27, 1994.
Anne K. Bingaman,
Assistant Attorney General.
Steven C. Sunshine,
Deputy Assistant Attorney General.
Constance K. Robinson,
Director of Operations.
Jonathan M. Rich,
Assistant Chief, Communications & Finance Section.
George S. Baranko,
Katherine E. Brown,
J. Philip Sauntry, Jr.,
Susanna M. Zwerling,
Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20002, (202) 514–5640.
[FR Doc. 94–27640 Filed 11–7–94; 8:45 am]
BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 1, 1994. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" of all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received follows:

1. *Applicant:* David F. Parmelee, Marjorie Barrick Museum of Natural History, University of Nevada, P.O. Box 454009, Las Vegas, Nevada 89154–4009—Permit Application No. 95–027.

Activity for Which Permit is Requested

Taking; Import into the United States.

The applicant is a former Principal Investigator with the U.S. Antarctic Program who had banded and monitored numerous birds in the Palmer Station vicinity during the years 1972–1985. repeated monitoring of these banded individuals yields important scientific data. The applicant has taken every opportunity to carry on this monitoring, including those times such as now when traveling on cruise vessels as a lecturer on polar conservation and biology. The applicant requests permission to continue monitoring previous banded individuals. In addition, the applicant would like to salvage up to 4–10 dead birds each of penguins, albatrosses, petrels, storm-petrels, diving petrels, sheathbills, skuas, gulls and terns and import them into the U.S. for scientific study conducted at the Barrick Museum of Natural History, University of Nevada.

Location

Antarctic Peninsula regions, including Anvers Island, the South Shetland and South Orkney Islands and the Weddell Sea area.

Dated: November 20, 1994–December 20, 1994.

Nadene G. Kennedy,
Permit Office, Office of Polar Programs.
[FR Doc. 94–27556 Filed 11–7–94; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority Watts Bar Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of the latest construction completion date specified in Construction Permit No. CPPR–91 issued to Tennessee Valley Authority (permittee) for Watts Bar Nuclear Plant (WBN), Unit 1. The facility is located at the permittee's site on the west bank of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–91 from December 31, 1994, to December 31, 1995. The proposed action is in response to the permittee's request dated September 19, 1994.

The Need for the Proposed Action

The proposed action is needed because the construction and modification of the facility is not yet fully completed. Following completion of hot functional testing, the permittee conducted an extensive review of the remaining scope of work required to complete the unit. The resulting detailed completion plan indicates fuel load for the unit will occur in the spring of 1995. The requested extension period includes contingency in case any adjustments to the schedule are needed.

The delays associated with the above efforts to ensure that WBN meets regulatory requirements and licensing commitments make it necessary for the permittee to request an extension of the expiration date for Construction Permit No. CPPR–91 until December 31, 1995.

Environmental Impacts of the Proposed Action

The environmental impacts associated with the construction of the facility have been previously discussed and evaluated in the staff's Final Environmental Statement (FES) issued on November 9, 1972 for the construction permit stage which covered construction of both units. The FES issued in December 1978 for the operating license stage addressed the environmental impacts of construction activities not addressed previously. The activities included: (1) construction of the new transmission route for the Watts Bar—Volunteer 500 kV line, (2) construction of the settling pond for siltation control for construction runoff at a different location from that originally proposed in the Final Environmental Statement—Construction Permit (FES–CP), (3) the relocation of the blowdown diffuser from the originally proposed site indicated in the

FES–CP. The staff addressed the terrestrial and aquatic environmental impacts in the Final Environmental Statement—Operating license (FES–OL) and concluded that the assessment presented in the FES–CP remains valid. The staff is currently reviewing updated environmental information and plans to issue findings in a supplement to the FES–OL in early 1995. The construction of Unit 1 is essentially 100 percent complete; therefore, most of the construction impacts discussed in the FES have already occurred.

Since this action would only extend the period of construction, it does not involve impacts different from those described and analyzed in the original environmental impact statement. The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The extension will merely grant the permittee more time to complete construction and modification in accordance with the previously approved construction permit. The activities related to the various corrective activities will result in additional workforce, being primarily engineering and technical personnel rather than construction personnel. At the present time, this workforce is basically dedicated to the completion of Unit 1. This previously increased workforce is declining as the corrective activities are completed and the unit approaches fuel loading. A large percentage of the additional workforce is contractors and consultants who do not live in the area and use only temporary quarters. While the current workforce level has caused a temporary, increased demand for services in the community and increased traffic on local roads, there are no major impacts due to the arrival of workers' families and demands for services necessary to support permanent residents (for example, housing and schools).

Based on the foregoing, the NRC staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addressing the proposed action is not required.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the permittee would not be able to complete construction of the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural states. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of use of a facility that is nearly completed. Therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES for Watts Bar.

Agencies and Persons Consulted

The NRC staff reviewed the permittee's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, the staff concludes that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated September 19, 1994, which is available for public inspection at the Commission Public Document Room, 2120 L Street NW., Washington, D.C. and at the Local Public Document Room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland this 31st day of October 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27612 Filed 11–7–94; 8:45 am]

BILLING CODE 7590–01–M

Order Prohibiting Involvement in Certain NRC-Licensed Activities; Effective Immediately

I

Thomas A. Nisbet was employed as a Radiographer for Western Industrial X-Ray Inspection Company, Inc. (Licensee or WIX), Evanston, Wyoming, from May 1993 to June 1994, when the WIX license was suspended. WIX is the holder of License No. 49–27356–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorizes the Licensee to possess sealed sources to iridium-192 in various radiography devices for use in performing industrial radiography in accordance with the conditions of the license. The license was suspended by NRC Order on June 16, 1994, and remains in suspension while a hearing requested by the Licensee is pending. On September 27, 1994, the NRC issued an immediately effective Order to WIX to transfer material in its possession. In a provision that is not effective immediately, the Order also revoked the WIX license.

II

Between January and June 1994, an inspection (030–32190/94–01) and an Office of Investigations (OI) investigation (4–93–049R) of licensed activities were conducted in response to allegations that Mr. Thomas A. Nisbet, a Radiographer formerly employed by WIX, had deliberately allowed a Radiographer's Assistant employed by WIX and working with him, to perform radiographic operations on July 31, 1993, without supervision, and that the Licensee deliberately failed to evaluate a July 31, 1993, potential overexposure incident involving the Radiographer's Assistant. During the inspection and investigation, the Radiographer's Assistant informed the inspector and investigator that she and Mr. Nisbet falsified a written incident report provided to their employer that described the circumstances involving the potential overexposure incident. This potential overexposure incident occurred as the result of the Radiographer's Assistant not properly implementing radiography procedures while performing radiographic operations in that she failed to perform a survey to verify that the source was returned to its shielded position after a radiographic exposure was taken and she failed to lock the source in the exposure device prior to moving the device.

Based on its review of the available information, the NRC concludes that Mr. Nisbet violated provisions of 10 CFR 30.10, which prohibits individuals from deliberately causing a licensee to be in noncompliance with NRC requirements and from deliberately providing incomplete or inaccurate information to the NRC or to a licensee of the NRC which the individual knows is material in some respect to the NRC. Specifically, as discussed below in more detail, the NRC concludes that : 1) Mr. Nisbet deliberately failed to provide personal supervision of, including the

failure to watch, his assistant, while she was performing radiographic operations on July 31, 1993, a violation of 10 CFR 34.44; and 2) Mr. Nisbet deliberately provided inaccurate information to the Radiation Safety Officer for WIX about the July 31, 1993, incident, a violation of 10 CFR 30.10.

During the inspection and investigation, Mr. Nisbet stated that he had allowed the Radiographer's Assistant to perform radiographic operations without his direct supervision. When questioned, Mr. Nisbet stated that he knew that allowing the Radiographer's Assistant to perform radiographic operations without his supervision was a violation of NRC requirements; however, during subsequent questioning, Mr. Nisbet stated that he knew that he was responsible for the Radiographer's Assistant but he did not know that he had to watch her perform radiographic operations 100 percent of the time. Mr. Nisbet stated that he was performing paperwork in his truck during the time that the Radiographer's Assistant was potentially overexposed while performing radiographic operations on July 31, 1993. Mr. Nisbet stated that his written report of the incident which he provided to the President and Radiation Safety Officer for WIX was not completely true in that he did not actually observe the Radiographer's Assistant conduct radiography when the incident occurred.

During an enforcement conference that was held on August 30, 1994, Mr. Nisbet stated that he and other WIX radiographers had allowed their assistants to perform radiographic operations without being observed once they were confident that their assistants could perform radiographic operations without direct supervision. Mr. Nisbet stated that this was a common practice and that the WIX President and Radiation Safety Officer, Mr. Larry D. Wicks, had provided guidance to conduct radiography in this manner. Mr. Nisbet stated that he knew that there was an NRC regulation which required radiographers to supervise radiographer's assistants, but he did not know specifically what this supervision entailed and the guidance that he received from Mr. Wicks relative to this requirement was that he could perform dark room activities and complete paperwork while the Radiographer's Assistant conducted radiographic operations once he was confident that the assistant could perform radiography without direct supervision. Mr. Nisbet also stated that he felt pressured to allow the Radiographer's Assistant to perform radiographic operations without direct supervision or observation in order to meet the schedule for accomplishing the number of contractually-specified daily radiographs.

Although 10 CFR 34.44 is explicit that personal supervision includes watching the radiogrpaher's assistant's performance of operations, Mr. Nisbet stated that he was provided guidance by his employer that is contrary to the requirements to that regulation. However, improper direction from management does not excuse failure to comply with regulatory requirements.

The following considerations raise significant questions about Mr. Nisbet's willingness to comply with the NRC regulation that governs the supervision of Radiographers' Assistants:

1. Mr. Nisbet initially told the investigators that he did not watch the Radiographer's Assistant operate the exposure device for a particular weld (three exposures) on July 31, 1993, which he knew was a violation of NRC requirements.

2. Mr. Nisbet initially told the investigators that he had told the Radiographer's Assistant that she violated NRC regulations when she operated the exposure device on July 31, 1993, without him observing.

3. Mr. Nisbet falsified the written report that described the July 31, 1993, incident so that the report indicated that he was observing the Radiographer's Assistant at the time that the potential overexposure of the Radiographer's Assistant occurred.

4. The Radiographer's Assistant told the investigators that she agreed to falsify the incident report because, knowing it was a violation of NRC requirements for her to perform radiographic operations without being observed by Mr. Nisbet, she believed that he would be fired if Mr. Wicks knew that Mr. Nisbet was not supervising her while she was performing radiography.

Mr. Nisbet also told NRC personnel during the enforcement conference that he and the Radiographer's Assistant agreed, at the suggestion of the Radiographer's Assistant's spouse, who was also a WIX radiographer and Assistant Radiation Safety Officer, to provide a false account of how the potential overexposure incident occurred. Mr. Nisbet stated that the Radiographer's Assistant's spouse told him and the Radiographer's Assistant that they were likely to be fired if they told Mr. Wicks what actually transpired. Upon further questioning by the NRC personnel during the enforcement conference, Mr. Nisbet stated that he was not coerced into falsifying the written incident report and it was his decision to do so. Mr. Nisbet stated that after Mr. Wicks became aware of what actually occurred, Mr. Wicks told him that he would be fired if a similar incident occurred again.

Based on its review of the evidence gathered during the OI investigation, as well as the information obtained during the enforcement conference, the NRC concludes that Mr. Nisbet deliberately failed to personally supervise the Radiographer's Assistant while she conducted radiographic operations on July 31, 1993, and that Mr. Nisbet deliberately provided false information to the Licensee regarding the July 31, 1993 incident.

Based on the above, Thomas A. Nisbet has engaged in deliberate misconduct that caused the Licensee to be in violation of 10 CFR 34.44. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Nisbet's actions in causing the Licensee to violate 10 CFR 34.44 have raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Nisbet were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Thomas A. Nisbet be prohitied from any involvement in NRC-licensed activities for a period of one year from the date of this Order, and if he is currently involved with another NRC licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Nisbet is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nisbet's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR

2 202, 10 CFR 30.10, and 10 CFR Part 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Thomas A. Nisbet is prohibited for one year from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. The first time Mr. Nisbet is employed in NRC-licensed activities following the one-year prohibition, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and the Regional Administrator, NRC Region IV, at least five days prior to the performance of licensed activities (as described in 1 above). The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Nisbet of good cause.

V

In accordance with 10 CFR 2.202, Mr. Nisbet must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Nisbet or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or 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 Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Nisbet if the answer or hearing request is by a person other than Mr. Nisbet. If a person other than Mr. Nisbet requests a hearing, that person shall set forth with particularity the manner in which his or her 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 Mr. Nisbet or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Nisbet, or any other person 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 31st day of October, 1994.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 94–27609 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No.: 40–8027]

Sequoyah Fuels Corporation, Gore, Oklahoma; Consideration of Amendment to Source Material License and Opportunity for Hearing

This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SUB–1010, issued to Sequoyah Fuels Corporation, at the Sequoyah Facility, Gore, Oklahoma. The licensee requested the amendment in a letter dated October 3, 1994, to fully implement the Groundwater Interim Measures Workplan required by the Administrative Order on Consent issued by the Environmental Protection Agency, dated August 3, 1993. The license amendment would permit the plugging of specified groundwater monitoring wells specified by NRC license SUB–1010 that do not produce reliable data, and substitute reliable wells that are currently being monitored in accordance with the SFC letter to the NRC dated September 2, 1992.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings," of the NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this Federal Register notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, to the attention of Mr. John H. Ellis, President, P.O. Box 610, Gore, OK 74435; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for

Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings" in 10 CFR Part 2, subpart L.

For further details with respect to this action, see the application for amendment dated October 3, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Stanley Tubbs Memorial Library, 101 E. Cherokee, Sallisaw, Oklahoma 74955.

Dated at Rockville, Maryland, this 2nd day of November, 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–27611 Filed 11–7–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–395]

South Carolina Electric & Gas Co.; South Carolina Public Service Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 50–395 issued to South Carolina Electric & Gas Company (the licensee) for operation of the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

The proposed amendment would relocate the Seismic Monitoring Instrumentation (SMI) Limiting Condition for Operation (LCO), Surveillance Requirements (SRs), and associated tables and bases contained in Technical Specifications (TS) section 3/4.3.3.3 to the Final Safety Analysis Report (FSAR) or an equivalent controlled document. The change would also delete the requirement for a special report when a seismic instrument is inoperable for more than 30 days.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed Technical Specification (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The function of the SMI system is to record the motion and effect of a seismic event. SMI can not initiate or mitigate a previously evaluated accident. Furthermore, the proposed TS change to relocate the SMI requirements from TS to the FSAR or equivalent controlled document is in accordance with the criteria (specifically Criterion 1) for determining those requirements that may be relocated from TS as defined by the NRC in its policy statement, "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," dated July 22, 1993. The SMI LCO, SRs, and associated tables and bases proposed for relocation from TS will continue to be implemented by administrative controls that will satisfy the requirements of TS section 6 "Administrative Controls." These requirements include a review of changes to plant systems and equipment and to the applicable administrative controls in accordance with 10 CFR 50.59.

Criterion 2 of the July 22, 1993, NRC policy statement states, "A process variable, design feature, or operating restriction that is an initial condition of a Design Basis Accident or Transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier." The SMI system does not monitor a process variable that is an initial condition for accident or transient analysis. Also, the SMI is not a design feature or an operating restriction that is an initial condition since it only provides information regarding the motion of and the plant structure/equipment response to an earthquake. Therefore, the current VCSNS SMI TS requirements do not meet Criterion 2 of the July 22, 1993, NRC policy statement.

Criterion 3 of the NRC policy statement states, "A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a Design Basis Accident or Transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier." The VCSNS SMI system does not function or actuate in order to mitigate the consequences of a Design Basis Accident or Transient. Therefore, the current VCSNS SMI TS requirements do not meet Criterion 3 of the July 22, 1993, NRC policy statement.

Criterion 4 of the NRC policy statement states, "A structure, system, or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety." Operating experience has shown that the VCSNS SMI system has no impact on public health and safety as defined by the NRC policy statement. Furthermore, VCSNS specific probabilistic risk assessment (PRA) does not credit the SMI system as a part of the plant response to an accident. Therefore, the current VCSNS SMI TS requirements do not meet Criterion 4 of the July 22, 1993, NRC policy statement for determining those requirements that should remain in TS.

The proposed TS change will maintain the current operation, maintenance, testing, and system operability controls for the SMI system. Furthermore, any future changes to the SMI system will be evaluated for the effect of those changes on system reliability and function as required by 10 CFR 50.59. The SMI system performance will not decrease due to the proposed TS change and the system will continue to be administratively controlled in accordance with TS section 6 (including the requirements of 10 CFR 50.59) thereby precluding a future decrease in SMI system performance/requirements.

The current TS Section 3.3.3.3, does not require plant shutdown if any SMI is inoperable and the provisions of TS Section 3.0.3 (i.e. plant shutdown) are not applicable. Therefore, the inoperability of this system and the consequences of an accident while this system is inoperable, were previously considered as not significant enough to require a change to the plant operating conditions.

Since the SMI system does not meet the criteria for instrumentation required in TS and since it will continue to be administratively controlled (including the requirements of 10 CFR 50.59), the

proposed TS change will not involve an increase in the probability or consequences of an accident previously evaluated.

2. *The proposed TS change does not create the possibility of a new and different kind of accident previously evaluated.*

The function of the SMI system is to record the motion and effect of a seismic event. The proposed TS change to relocate the SMI requirements from TS to the FSAR or equivalent controlled document is in accordance with the criteria for determining TS candidates for relocation as defined by the NRC in the policy statement, dated July 22, 1993. The SMI system does not monitor a process variable that is an initial condition for an accident or transient analysis. The SMI is also not a design feature or an operating restriction that is an initial condition of a Design Basis Accident or Transient analysis since it only provides information regarding the motion of and the plant structure/equipment response to an earthquake.

The proposed TS change to relocate the TS requirements will not alter the operation of the plant, or the manner in which the SMI system will perform its function. Any future changes will continue to be administratively controlled in accordance with TS section 6, including the requirements of 10 CFR 50.59.

The proposed TS change will not impose new conditions or result in new types of equipment malfunctions which have not been previously evaluated. Therefore, the proposed TS change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. *The proposed TS change does not involve a significant reduction in a margin of safety.*

The proposed TS change to relocate the SMI requirements from TS is in accordance with the criteria for determining TS candidates for relocation as defined by the NRC in its policy statement, dated July 22, 1993.

Criterion 1 of the NRC final policy statement states, "Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary." The NRC policy statement explains that ". . . This criterion is intended to ensure that Technical Specifications control those instruments specifically installed to detect excessive reactor coolant leakage. This criterion should not, however, be interpreted to include instrumentation to detect precursors to reactor coolant pressure boundary leakage or instrumentation to identify the source of actual leakage (e.g. loose parts monitor, seismic instrumentation, valve position indicators)." Based on this NRC guidance, the VCSNS FSAR, and TS bases 3/4.3.3.3, the SMI does not "detect and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary." Therefore, the current VCSNS SMI TS requirements do not meet Criterion 1. Operating experience has shown that the VCSNS SMI system has no impact on public health and safety as defined by the NRC policy statement. In addition, the VCSNS PRA does not credit the SMI system as a part of the plant response to accidents.

The SMI LCO, SRs, and associated tables and bases proposed for relocation to the FSAR or equivalent controlled document will continue to be covered by administrative controls that will satisfy the requirements of TS section 6 "Administrative Controls." Those requirements include a review of future changes to the system and applicable administrative controls in accordance with the provisions of 10 CFR 50.59.

Accordingly, based on NRC specific guidance, operating experience, and continued imposition of administrative controls, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comment received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 8, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically expalin the reasons why intervention should be permitted with particular reference to the

following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Randolph R. Mahan, attorney for the licensee, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(l)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 17, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Dated at Rockville, Maryland, this 2nd day of November, 1994.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27610 Filed 11–7–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34924; File No. SR–NYSE–94–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendments to Rule 325

November 1, 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 September 13, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III 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 purpose of this proposed rule change is to amend Rule 325 to require written notification to the Exchange within forty-eight hours of significant decreases in tentative net capital of members and member organizations. The text of the proposed rule follows (italics reflects proposed additions to the Rules):

Capital Requirements for Individual Members and Member Organizations

General Provisions

Rule 325(a) Each member or member organization subject to Rule 15c3–1 promulgated under the Securities Exchange Act of 1934 shall comply with the capital requirements prescribed therein and with the additional requirements of this Rule 325.

(b)(*1*) Each member or member organization subject to this Rule shall forthwith notify the Exchange if his or its net capital after deduction of all

[1] On October 27, 1994, the NYSE filed an amendment clarifying the term "tentative net capital." The amendment also referenced Rule 15c3–1 under the Act.

capital withdrawals including maturities, if any scheduled during the next six months, falls below the pertinent percentage indicated below:

1. If the net capital minimum dollar amount requirement is applicable—150 percent thereof or some greater percentage as may from time to time be designated by the Exchange, or

2. If the ratio of aggregate indebtedness to net capital is applicable—10 percent of aggregate indebtedness, or

3. If the alternative net capital requirement percentage is applicable, the greater of 5% of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers under SEC Rule 15c3–3, or, if registered as a Futures Commission Merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder.

(2) Each member or member organization shall within forty-eight hours notify the Exchange, in writing, whenever tentative net capital (net capital before application of haircuts and undue concentration charges), as computed under Securities Exchange Act Rule 15c3–1 has declined 20% or more from the amount reported in the most recent FOCUS Report with the Exchange.

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 proposed rule change concerns an amendment to Rule 325 that requires members and member organizations to provide written notification to the Exchange within forty-eight hours if tentative net capital (net capital before application of haircuts and undue concentration charges) has declined 20% or more from the amount reported in the most recent FOCUS Report filed with the Exchange.

Currently, some member organizations (*e.g.*, broker-dealers that carry customer accounts) file financial reports on a monthly basis and other member organizations file on a quarterly basis. In both instances, the filing dates are several weeks after the date that the financial information in the reports is prepared.

Consequently, the Exchange believes that there is a need for monitoring of significant changes in an organization's financial condition between the reporting dates through a requirement for more immediate notification of significant declines in tentative net capital.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") in that it protects investors and the public interest by ensuring that member organizations comply with certain prescribed minimum financial standards.

The proposed change is also consistent with Section 6(c)(3)(A) of the Act which permits a national securities exchange to condition the membership of a broker or dealer that does not meet such standards of financial responsibility as are prescribed by the rules of the Exchange.

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 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 neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such 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

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the commission's Public Reference Section, 450 Fifth Street, 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–94–31 and should be submitted by November 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27563 Filed 11–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34925; International Series No. 738; File No. SR–Phlx–94–18]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Customized Foreign Currency Options

November 1, 1994.

I. Introduction

On April 12, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of customized foreign currency options ("FCOs"), specifically, customized

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

inverse FCOs ("Customized Inverses")[3] and customized cross-rate FCOs ("Customized Cross-Rates"). (Customized Inverses, Customized Cross-Rates, and Customized Strikes (as defined herein) are collectively referred to as "Customized FCOs".) Notice of the proposed rule change appeared in the **Federal Register** on July 12, 1994.[4] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to the proposal on August 15, 1994,[5] Amendment No. 2 on September 20, 1994,[6] and Amendment No. 3 on November 1, 1994.[7] This order approves the Exchange's proposal, as amended.

II. Description of the Proposal

Pursuant to the proposed rule change, the Exchange will be able to offer the ability for its participants to trade: (1) Customized Strikes on any of the existing eight currencies on which the Exchange presently lists FCOs, *i.e.*, the British pound, Swiss frank, French franc, Deutsche mark, Japanese yen, Australian dollar, Canadian dollar, and European Currency Unit ("ECU") (collectively, "Approved Currencies"); (2) Customized Inverses on any Approved Currency; and (3) Customized Cross-Rates on any two Approved Currencies. Additionally, the proposed rule change will allow FCO participants[8] to express quotes for Customized FCOs as a percentage of the underlying currency,[9] in addition to the current method of quoting "regular" FCOs[10] in terms of the base currency[11] per unit of the relevant underlying currency.

A. Characteristics of Customized FCOs

The characteristics of and procedures for trading Customized FCOs are contained in new Phlx Rule 1069 (Customized Foreign Currency Options). Rule 1069(a) sets forth the parameters applicable to Customized FCOs. Specifically, Customized Strikes may be traded on any Approved Currency,[12] and Customized Cross-Rates may be traded on any two Approved Currencies, exclusive of the U.S. dollar. The contract size for Customized Strikes and Cross-Rates will be the same as those for non-Customized FCOs on the same underlying Approved Currency.

Additionally, Rule 1069(a) provides for the trading of Customized Inverses on any Approved Currency.[13] A Customized Inverse is a Customized FCO where the underlying currency is the U.S. dollar. When trading a Customized Inverse, bids and offers will be quoted in, and premium will be paid in, the base currency (*i.e.*, an Approved Currency other than the U.S. dollar), and the contract will be settled in the underlying currency (*i.e.*, U.S. dollars).[14] The contract size for a Customized Inverse will be US$50,000.

Rule 1069(a) further provides an alternative quote format for Customized FCOs. Presently, the Exchange's non-Customized FCOs are quoted in terms of the base currency per unit of underlying currency, in which case premium is quoted and paid in the base currency. The proposal provides an alternative quoting format whereby quotes for Customized FCOs may be quoted as a percentage of the underlying currency ("Percentage Quoting"). In Percentage Quoting, the contract will be quoted in, the premium will be paid in, and the contract will settle in, the underlying currency.

Finally, Rule 1069(a) provides that Customized FCOs (1) may be either put or call contracts, (2) must be European-style,[15] (3) must have a standardized expiration date as provided in Phlx Rule 1000(b)(21), and (4) may have any listed or non-listed exercise price determined by the requesting FCO participant.[16]

B. Procedures for Trading Customized FCOs

The procedures for requesting and obtaining quotes for Customized FCOs are provided in Phlx Rule 1069 (a) and (b). First, Rule 1069(a) provides minimum sizes for trades in Customized FCOs. Specifically, (1) the minimum size for an opening transaction in any series in which there is no open interest at the time a request for quote ("RFQ") is submitted will be 300 contracts, (2) the minimum size for an opening transaction in any series with open interest will be 100 contracts, and (3) the minimum size for a closing transaction will be the lesser of 100 contracts or the remaining number of contracts. The minimum size for quotes responsive to a RFQ will be the lesser of 100 contracts or the remaining number of contracts on a closing transaction, provided, however, that assigned registered options traders ("ROT") must provide responsive quotes for at least 300 contracts or the number of contracts requested, whichever is less.[17]

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[3] *See infra* Section II.A (Characteristics of Customized FCOs).

[4] *See* Securities Exchange Act Release No. 34308 (July 5, 1994), 59 FR 35551 (July 12, 1994).

[5] In Amendment No. 1 the Exchange proposed several substantive and clarifying amendments to the proposed rule change. *See* Letter from Michele Weisbaum, Associate Generel Counsel, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated August 12, 1994.

[6] The Exchange previously submitted a proposed rule change to list and trade FCOs with customized strike prices ("Customized Strikes"). Customized Strikes will provide FCO traders and their customers with the ability, within certain limits, to trade an FCO with eny exercise price it chooses on a specific Approved Currency (as defined herein) even if that price does not correspond to an exercise price of e listed non-Customized FCO. *See* Securities Exchange Act Release No. 33959 (April 25, 1994), 59 FR 22698 (May 2, 1994) ("File No. SR-Phlx-94-11"). Because of the overlap between that proposal end the current proposal, the Exchange withdrew File No. SR-Phlx-94-11 and, in Amendment No. 2, the Exchange incorporated the substance of File No. SR-Phlx-94-11, as amended and supplemented, into the current proposed rule change. In Amendment No. 2, the Exchange also established how bids end offers for Customized FCOs will be expressed pursuant to Phlx Rule 1033, and the minimum fractional changes that will be applicable to Customized FCOs pursuant to Phlx Rule 1034. *See* Letter from Michele Weisbaum, Associate Generel Counsel, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated September 20, 1994.

[7] Amendment No. 3 incorporates the substance of and withdraws Amendment Nos. 1 end 2. In Amendment No. 3, the Exchenge also proposes several additional substantive and clarifying amendments to the proposed rule change, as discussed herein, that were not conteined in Amendment Nos. 1 end 2. *See* Letter from Michele Weisbaum, Associete General Counsel, Phlx, to Micheel Welinskas, Branch Chief, OMS, Division, Commission, dated November 1, 1994 ("Amendment No. 3").

[8] FCO participants include Exchange members, and non-members who have been admitted to the Exchange as FCO participants. *See* Phlx Rule 13.

[9] The underlying currency is the currency in which an FCO settles. All non-Customized FCOs currently traded on the Exchange settle in one of the Approved Currencies.

[10] The terms regular FCOs and non-Customized FCOs, as used herein, refer to the standardized FCOs currently approved for listing and trading by the Exchange.

[11] Presently, the base currency is the currency in which premiums are quoted and paid. For the Exchange's existing non-Customized FCOs (other than regular cross-rate FCOs) the base currency is the U.S. dollar.

[12] The proposal also adds the U.S. dollar to list of Approved Currencies.

[13] The Exchange elso sometimes refers to Customized Inverses as "European-Term" Customized FCOs.

[14] As the name suggests, e Customized Inverse merely inverts the terms of the Exchange's non-Customized FCOs (other then the regular cross-rate FCOs). For example, the existing non-Customized U.S. dollar/German mark contract is quoted in the base currency (cents) per unit of the underlying currency (marks), the premium is paid in U.S. dollars, and the contract is settled in German marks. In a Customized Inverse (*e.g.*, Germen mark/U.S. dollar), the U.S. dollar becomes the underlying currency and the German mark becomes the base currency. As a result, when treding this Customized Inverse, the premium would be quoted in German marks per U.S. dollar, the premium would be paid in German marks, and the contract would be settled in U.S. dollars.

[15] European-style options may only be exercised during a specified time period immediately prior to expiration of the option.

[16] *See* Amendment No. 3, *supra* note 7.

[17] Assigned ROTs are not specifically required to provide a responsive quote for each RFQ. The Phlx maintains, however, that an assigned ROT can be

Continued

Rule 1069(b) provides that any FCO participant may request a quote for a Customized FCO from the trading crowd, with the characteristics as specified in Rule 1069(a). The FRQ may include the number of contracts for which the quote is being requested.[18] If neither the RFQ nor any responsive quote specifies the number of contracts for which it applies, responsive quotes will be firm only for the minimum transaction sizes discussed above.[19]

Once a RFQ has been submitted and disseminated, all FCO participants will be given a reasonable opportunity to request a response time period during which time any participant may provide a responsive quote.[20] If a response time period is requested, no trades may be executed until the response time period has elapsed, provided, however, that if two or more assigned ROTs provide responsive quotes prior to the end of the response time period, at the option of the party who submitted the RFQ or any other FCO participant, the order may trade at that time either in whole or in part.[21]

Rule 1069(b) further provides that responsive quotes which become the best bid (offer) are entitled to participate in resulting trades on a parity/priority basis in accordance with Rule 1014(h),[22] provided, however, that any assigned ROT who previously responded with a responsive quote which was thereafter improved upon during the response time period by another participant is entitled to participate on a parity basis with that other participant by announcing immediately thereafter, and prior to the execution of the order, that he or she is matching that best bid (offer). This ability to match on parity is available to assigned ROTs until the execution of the trade or the end of the response time period, whichever occurs first.[23] When a response time period is requested, the party submitting the RFQ may not cross any portion of the order until after the earlier of the end of the response time period, if any, or the receipt of responsive quotes from two or more assigned ROTs. An order may be executed after the response time period has elapsed regardless of how many assigned ROTs have previously responded. After the response time period has elapsed, Phlx Rule 1014(h) governs priority/parity except that priority and parity obtained during the response time period, as discussed above, are retained unless or until the best bid (offer) established during the response time period is improved.[24]

C. Additional Rules Contained in Phlx Rule 1069

Rule 1069 also contains additional rules applicable to the trading of Customized FCOs. Rule 1069(d) provides that ROTs must apply to the Exchange in order to obtain an assignment in Customized FCOs in one or more Approved Currencies. Further, all ROTs assigned to trade Customized FCOs are subject to the general obligations and restrictions applicable to ROTs as specified in Phlx Rule 1014(c).[25]

Rule 1069(d) sets forth the financial requirements for ROTs trading Customized FCOs. Specifically, assigned ROTs will be required to maintain a minimum of $1 million in net liquid assets. Further, non-assigned ROTs may not execute transactions in Customized FCOs unless the non-assigned ROT has a minimum of $250,000 in net liquid assets. All ROTs trading Customized FCOs, both assigned and non-assigned ROTs, will be required to immediately inform the Exchange's Examination Department whenever the ROT fails to be in compliance with these requirements.[26]

Phlx Rule 1069(e) specifies that ROTs may not effect a transaction in Customized FCOs unless a letter of guarantee has been issued by a Phlx clearing member organization and filed with the Exchange pursuant to Phlx Rule 703 specifically accepting financial responsibility for all Customized FCO transactions entered into by the ROT. Additionally, a ROT cannot engage in Customized FCO transactions if the letter of guarantee is revoked.

Phlx Rule 1069(f) provides that transactions in Customized FCOs may be effected during normal Exchange FCO trading hours on any business day. Rule 1069(f) further provides that there will be no trading rotations in Customized FCOs, either at the opening or at the close of trading.

Finally, Rule 1069(j) provides that for Customized Strikes, the quote spread parameters will be twice those specified in Phlx Rule 1014(c) for the relevant underlying Approved Currency. The rule further provides that Customized Inverses and Customized Cross-Rates will be exempt from quote spread parameters.[27]

D. Position and Exercise Limits

Phlx Rule 1001 (Position Limits) is being amended to provide position limits for Customized FCOs. Rule 1001 presently provides that the position limit for non-Customized FCOs on a particular Approved Currency, other than the U.S. dollar, is 150,000 contracts on the same side-of-the-market, provided that annual trading volume in FCOs on that Approved Currency is at least 3,500,000 contracts. In all other cases, the position limit for non-Customized FCOs is 100,000 contracts on the same side-of-the-market.[28]

required by a Floor Broker or Floor Official (each as defined in the Phlx's rules), pursuant to Phlx Rule 1014(c), to provide a responsive quote to a party submitting a RFQ. *See* Amendment No. 3, *supra* note 7, and Phlx Floor Procedure Advice B–1.

[18] All RFQs, in addition to all responsive quotes and completed trades, will be promptly reported to the Options Price Reporting Authority ("OPRA") and disseminated as administrative text messages. *See* Phlx Rule 1069(h). The Exchange has represented that the OPRA has the capacity to, and will, disseminate this information to vendors in a manner clearly indicating the type of Customized FCO involved (*i.e.*, Customized Strike, Cross-Rate, or Inverse), the quoting format (*i.e.*, either base currency per unit of underlying currency or Percentage Quoting), and the Approved Currency in which premiums are quoted and paid. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on October 31, 1994.

[19] *Id.*

[20] The length of the response time period will be fixed and set by the Exchange's Foreign Currency Options Committee and will be within a range between one and ten minutes. Neither the party submitting the RFQ nor any other FCO participant will have any ability to adjust the length of the response period. *See* Amendment No. 3, *supra* note 7.

[21] Responsive quotes cannot be made specific for acceptance by particular participants. *Id.*

[22] Phlx Rule 1014(h) generally sets forth the priority and parity rules applicable to FCOs traded on the Phlx.

[23] *See* Amendment No. 3, *supra* note 7.

[24] *Id.*

[25] ROTs will be subject to Exchange disciplinary actions for failing to meet their responsibility of making two-sided markets when requested to do so. *See* Phlx Rule 1014(c) and Phlx Floor Procedure Advice B–1. Additionally, Phlx ROTs are required to trade in person, and not through the use of orders, the greater of 1,000 contracts or 50% of their contract volume on the Exchange in each quarter. Also, at least 50% of a ROT's trading activity in each quarter must be in assigned options. *See* Phlx Floor Procedure Advice B–3. For purposes of determining whether these trading requirements have been satisfied, trading in Customized FCOs will be treated the same as non-Customized FCOs. Telephone conversation with Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on October 20, 1994.

[26] *See* Amendment No. 3, *supra* note 7. The Exchange represents that this affirmative obligation is being added to supplement the Exchange's current surveillance and monitoring procedures pursuant to which the Exchange monitors compliance with, among other things, the Exchange's financial requirements. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, OSM, Division, Commission, on October 17, 1994.

[27] The Exchange will conduct a study of the markets for Customized Inverses and Cross-Rates to build an historical pricing reference database on which to analyze whether quotation parameter rules should be imposed in the future for these Customized FCOs. *See* Amendment No. 3, *supra* note 7.

[28] *See* Phlx Rule 1001, Commentary .05(b).

Customized FCOs will be subject to these same position limits; however, positions in Customized FCOs will be aggregated with positions in non-Customized FCOs and, in some cases, with other Customized FCOs. Specifically, Customized Strikes will be aggregated with positions in regular FCO contracts having the same underlying currency.[29] For Customized Inverses, the position limit applicable to the base currency of the Customized Inverse will apply.[30] Except as provided below, position limits applicable to Customized Cross-Rates will be the same as position limits applicable to regular cross-rate FCOs pursuant to Phlx Rule 1001, Commentary 05. For aggregation purposes, positions in Customized Cross-Rates will be aggregated with positions in regular cross-rate FCOs and other Customized Cross-Rates (1) with the same base and underlying currencies and (2) where the base and underlying currencies are reversed.[31]

Additionally, Phlx Rule 1001, Commentary .05(c)(4), provides that for purposes of aggregating positions, long positions in Customized Inverse calls, short positions in Customized Inverse puts, short positions in non-Customized FCO calls, short positions in Customized Strike calls, long positions in non-Customized FCO puts, and long positions in Customized Strike puts will be aggrgated. Similarly long positions in Customized Inverse puts, short positions in Customized Inverse calls, short positions in non-Customized FCO puts, short positions in Customized Strike puts, long positions in non-Customized FCO calls, and long positions in Customized Strike calls will be aggregated.[32] This is consistent with the aggregation procedures currently provided in Phlx Rule 1001, Commentary .02, for positions on the same side of the market.

Furthermore, for purposes of determining whether the 3,500,000 contract annual trading volume level has been satisfied for purposes of applying the 150,000 contract position limit pursuant to Rule 1001, Commentary .05(b), trading volume in Customized FCOs will not be considered.[33] Customized FCOs will be eligible for the 150,000 position limit level if: (1) In the case of Customized Strikes, non-Customized FCOs on the same underlying currency, when considered alone, would be so eligible; (2) in the case of Customized Inverses, if non-Customized FCOs on the same base currency, when considered alone, would be so eligible; and (3) in the case of Customized Cross-Rates, if regular cross-rate FCOs on the same base and underlying currencies, when considered alone, would be so eligible. The higher position limit will not be available for Customized Cross-Rates where there are no regular cross-rate FCOs trading on the same or the reverse base and underlying currencies.

Finally, Rule 1069(i) provides that the exercise limits set forth in Rule 1002 applicable to non-Customized FCOs also apply to Customized FCOs.[34] Moreover, when Customized FCOs are exercised, the lesser of 100 contracts or the remaining number of open contracts must be exercised.

E. Margin Requirements Applicable to Customized FCOs

Customized Inverses and Customized Strikes will be margined at the same levels as the Exchange's non-Customized FCOs.[35] Customized Cross-Rates, however, will be margined using a two tier system. Tier I will consist of all pairings of Approved Currencies (not involving the U.S. dollar) whose daily price changes have a correlation greater than or equal to .25, and Tier II will consist of all remaining pairings of Approved Currencies. The initial and/or maintenance margin requirements for Customized Cross-Rates will be 100% of the value of the underlying position plus: (1) 4% for Tier I Approved Currency pairings; and (2) 6% for Tier II Approved Currency Pairings.[36]

The Exchange will conduct a regular two-step review of the margin levels for Customized Cross-Rates. The first review, to be conducted at least monthly,[37] will determine the correlations between all of the possible combinations of Approved Currencies for the most recent 24 month period. If a monthly or any special review reveals that a combination of Approved Currencies should be in another tier based on the correlation of those Approved Currencies, the change will immediately be implemented and the membership, the public, and the Commission will be promptly notified.

The second review will determine whether the actual margin levels are adequate to cover seven day price changes for all possible cross-rate combinations within a tier. Frequency distributions of seven day price movements for all currency combinations will be reviewed on a monthly basis to determine whether the percentage of margin "add-on" is sufficient to cover 95% of all instances over the preceding two year period within the tier group for those combinations. If the percentage falls to less than 95%, the Exchange will take steps to increase the margin level for those pairings to one which will cover at least 97.5% of all instances. If the margin adequacy level is greater than 99%, the Exchange will take steps to lower the margin requirements for those pairings to one which will cover 99%. In no event, however, will the initial and/or maintenance margin levels for any pairing of Approved Currencies be reduced below the 4% and 6% levels discussed above.[38]

The OCC will clear and settle all trades in Customized FCOs. Because quotes in these options will not be continuously updated or otherwise priced by the Exchange, the OCC will generate a theoretical price based on the prices and quotes of the Customized FCOs, prices of non-Customized FCO series, and the closing value of the relevant underlying Approved Currency. The OCC will use this price to mark the Customized FCO contracts daily and calculate margin requirements.[39]

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[29] *See* Amendment No. 3, *supra* note 7.

[30] For example, if the position limit for the U.S. dollar/German mark non-Customized FCO is 150,000 contracts, the position limit for German mark/U.S. dollar Customized Inverses will also be 150,000 contracts. Further, positions in U.S. dollar/German mark non-Customized FCO contracts will be aggregated with positions in German mark/U.S. dollar Customized Inverse contracts on the same side of the market. In the case of the German mark, positions in the Exchange's cash/spot German mark FCOs must also be eggregated with the above positions and with positions in Customized Strikes where the German mark is the underlying currency. *See infra* note 32.

[31] For example, positions in the German mark/Japanese yen Customized Cross-Rate will be aggregated with positions in the non-Customized German mark/Japanese yen contracts and with positions in the Japanese yen/German mark Customized Cross-Rate.

[32] For example, the following positions related to the German mark would be aggregated for purposes of Rule 1001: (1) Long Inverse German mark/U.S. dollar calls; (2) short Inverse German mark/U.S. dollar puts; (3) short standardized U.S. dollar/German mark calls; (4) short Customized Strike U.S. dollar/German mark calls; (5) long standardized U.S. dollar/German market puts; and (6) long Customized Strike U.S. dollar/German market puts. In addition, positions in the Exchange's cash/spot U.S. dollar/German mark contract on the same side of the market as the foregoing positions must also be aggregated.

[33] *See* Amendment No. 3, *supra* note 7.

[34] *Id.*

[35] *See* Phlx Rule 722.

[36] The minimum margin for Tiers I and II will be reduced by the amount by which the position is out-of-the-money, subject to a floor of 100% of the value of the underlying position plus ¾% *Id.*

[37] The Exchange also has the ability to conduct more frequent reviews in the event of major price movements in any of the underlying currencies.

[38] *See* Amendment No. 3, *supra* note 7.

[39] *See infra* note 55.

F. Other Applicable Exchange Rules

The Phlx is also amending certain other Exchange rules to accommodate the trading of Customized FCOs. Several of these amendments are necessary because of the fact that for purposes of trading Customized FCOs, the U.S. dollar is now included as an Approved Currency.[40]

Other rule amendments are also necessary in order to incorporate Customized FCOs into the Exchange's rules. First, Rule 1002 (Exercise Limits) is being amended to add a cross-reference to Rule 1069 to specify that when exercised, there is both a maximum and a minimum number of Customized FCOs that can be exercised pursuant to the Rule.[41] Second, Rule 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders) is being amended to add a cross-reference to Rule 1069(j) to indicate that separate bid/ask differentials are applicable to Customized FCOs. Third, Rule 1033 (Bids and Offers—Premium) and Rule 1034 (Minimum Fractional Changes) are being amended in order to provide rules for quoting Customized Inverses and Cross-Rates and for the minimum fractional changes applicable to Customized Inverses and Cross-Rates, respectively. Fourth, Rule 1047 (Trading Rotations, Halts and Suspensions) is being amended to specify that there will be no trading rotations for Customized FCOs. Additionally, because the proposed rule change will alter language in Rules 1009 (Criteria for Underlying Stocks) and 1033 (Bids and Offers—Premium), the Exchange is proposing to correct some inaccurate or redundant information presently contained in those rules.

Furthermore, except as modified or amended herein, Customized FCOs will be subject to all Exchange rules applicable to non-Customized FCOs and will be subject to all Exchange rules regarding surveillance and sale practices. Finally, unless specifically exempted, all floor trading procedures will also apply to the trading of Customized FCOs.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5)[42] and 11A[43] of the Act. In particular, the Commission believes that the proposed rule change is designed to provide institutional investors with exchange-traded customized FCOs that may be more suitable to their investment needs.[44]

Moreover, consistent with Section 11A of the Act, the proposal should encourage fair competition among brokers and dealers and exchange markets by allowing the Phlx to compete more effectively with the over-the-counter ("OTC") derivatives market in FCOs. For instance, as noted by the Phlx, FCO market participants traditionally have been able to customize FCOs in the OTC derivatives market, designating many if not all of the terms of the FCOs. By trading in the OTC derivatives market, however, these users, who are almost exclusively institutional investors, do not benefit from the advantages of an organized exchange. These benefits include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the OCC that will apply for all Customized FCOs traded on the Exchange. The Commission believes that the Phlx proposal will provide these benefits to investors. Accordingly, the Commission believes that Phlx proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who currently rely predominantly on the OTC derivatives market to satisfy their foreign currency hedging needs.

A. Proposed Framework for Trading Customized FCOs

In general, transactions in Customized FCOs will be subject to many of the same rules that apply to non-Customized FCOs traded on the Phlx. In order to provide investors with the flexibility to designate terms of the Customized FCOs and to accommodate the special trading of Customized FCOs, however, several new rules will apply solely to Customized FCOs.

Due to the customized nature of these options, Customized FCOs will not have trading rotations at either the opening or closing of trading. In addition, the auction process outlined above in proposed Rule 1069 sets forth a procedure of customized negotiation for those investors seeking particular flexibility in setting certain FCO terms. Accordingly, the Phlx proposed rules specific to Customized FCOs vary from the traditional procedures for trading non-Customized FCOs. The Commission believes that the Customized FCO auction process, as outlined above, appears reasonably designed to provide investors with the benefits of an exchange auction environment for FCOs with features of a negotiated transaction between investors. The Commission believes that this is particularly true in view of the fact that most participants in the FCO market are institutional investors and that the proposed rule change is geared specifically to these investors. Further, the auction process proposed for Customized FCOs is similar to that previously approved by the Commission for exchange-trading of FLEX Options.[45]

Moreover, the proposal offers flexibility to institutional investors in the FCO market without raising significant market manipulation concerns. First, as noted above, transactions in Customized FCOs will be subject to many of the same rules that apply to non-Customized FCOs traded on the Exchange, including all Exchange rules regarding surveillance and sales practices. Additionally, position limits for Customized FCOs, as described above, are the same as those for non-Customized FCOs with the additional protection that positions in Customized FCOs will be aggregated with positions

[40] *See* Phlx Rules 1000 (Applicability, Definitions and References), 1001 (Position Limits), 1009 (Criteria for Underlying Stocks), and 1034 (Minimum Fractional Changes).

[41] *See supra* Section II.C (Additional Rules Contained in Phlx Rule 1069).

[42] 15 U.S.C. 78f(b)(5) (1988).

[43] 15 U.S.C. 78k–1 (1982).

[44] The Commission notes that in many respects, the Phlx proposal to trade Customized FCOs raises many of the same issues that were raised and addressed in connection with proposals by certain of the options exchanges to trade flexible exchange options on broad-based indexes ("FLEX Options"). *See* Securities Exchange Act Release Nos. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (order approving the trading of FLEX Options on the S&P 100 and 500 stock indexes), 32694 (July 29, 1993) 58 FR 41814 (August 5, 1993) (order approving the trading of FLEX Options on the Russell 2000 stock index), 32781 (August 20, 1993), 58 FR 45360 (August 27, 1993) (order approving the trading of FLEX Options on the Major Market, Institutional, and S&P MidCap 400 stock indexes), and 34364 (July 13, 1994), 59 FR 36813 (July 19, 1994) (order approving the trading of FLEX Options on the Wilshire Small Cap and PSE Technology stock indexes) (collectively, "FLEX Options Approval Orders").

[45] *Id.* In addition, based on representations from the Phlx and the OPRA, the Commission believes that the Exchange and the OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with customized strike options. *See* Letter from Steven Watson, Data Processing, Phlx, to Richard Cangelosi, Director of New Products, Phlx, dated July 27, 1994, and letter from Joseph Corrigan, Executive Director, OPRA, to Richard Cangelosi, Director of New Products, Phlx, dated July 21, 1994. *See also, supra* note 18.

in non-Customized FCOs.[46] The Commission believes that these provisions will help to ensure that the Exchange has the ability to adequately surveil the market for Customized FCOs and to take prompt actions (including timely communications with the Commission) should any unanticipated adverse market effects develop.

B. Customized Strikes and Inverses

The Commission believes that the listing and trading of Customized Strikes and Inverses does not raise any significant regulatory issues that were not addressed by the Phlx when the Commission originally approved the trading of non-Customized FCOs.[47] Specifically, while Customized Strikes and Inverses are new FCO products, they are very similar to non-Customized FCOs in that investors will still be taking positions based on their expectations of the future relationship between an Approved Currency (other than the U.S. dollar) and the U.S. dollar. The proposal, as with FLEX Options that currently trade on several of the other options exchanges,[48] merely allows investors to more closely tailor the current Exchange-traded FCOs to their particular investment needs. As a result, the Commission believes that the listing and trading of Customized Strikes and Customized Inverses, in the context of the framework described above, is appropriate and consistent with the Act.

C. Customized Cross-Rates

The discussion above regarding Customized Strikes and Inverses also applies to the listing of Customized Cross-Rates. Customized Cross-Rates, however, raise additional issues in that with Customized Cross-Rates, investors will be able to trade options on combinations of Approved Currencies that currently cannot be traded on the Exchange. The Exchange believes, however, that the concerns raised by this portion of the proposal are not any different from those that were raised and addressed by the Exchange when the Commission approved the listing and trading of regular cross-rate FCOs.[49] In the Cross-Rate Approval Order, the Commission stated that regular cross-rate FCOs are riskier and more complex than non-Customized FCOs where the U.S. dollar is the base currency. The Commission, however, found that those risks were adequately disclosed in the Options Disclosure Document ("ODD") which is required to be delivered to all options investors.[50] Similarly, the Commission notes here that the ODD was recently amended so that the discussion of FCOs now also discloses the risks of Customized Cross-Rates, in particular, and Customized FCOs, in general.[51]

Further, the Commission notes that the proposed margin levels for Customized Cross-Rates are more stringent than those approved for regular cross-rate FCOs. Specifically, for regular cross-rate FCOs, the Exchange requires a margin of 100% of the option premium plus 4% of the value of the underlying foreign currency, with an adjustment for out-of-the-money options of not less than 100% of the options premiums plus ¾% of the value of the underlying foreign currency. As described above, the proposed rule change provides two tiers for purposes of determining the applicable margin for Customized Cross-Rates based on historical correlation rates between particular combinations of Approved Currencies (other than the U.S. dollar). The lower tier requires margin of not less than 100% of the options premium plus 4% of the value of the underlying currency, and the higher tier requires margin of not less than 100% of the options premium plus 6% of the value of the underlying currency. The Commission notes that the Phlx must raise these levels, if during a review of margin levels and tier classifications,[52] the Phlx determines that the 4% and 6% margin levels for Tiers I and II, respectively, fail to meet certain specified criteria designed to ensure coverage of most expected market moves in the relevant currencies.[53] The Commission, therefore, believes that the proposed margin levels for Customized Cross-Rates will result in adequate coverage of contract obligations, and are designed to preclude systemic risks arising from excessively low margin levels.[54] Accordingly, the Commission believes that the listing and trading of Customized Cross-Rates, within the framework described above, is appropriate and consistent with the Act.

D. Percentage Quoting

The Commission also believes that allowing Customized FCOs to be quoted as a percentage of the particular underlying currency does not raise any significant regulatory issues. As in the discussion above with regard to Customized Strikes and Inverses, Percentage Quoting does not change the basic structure of non-Customized FCOs now trading on the Exchange. Investors currently can mathematically convert a premium expressed in terms of U.S. dollars per unit of underlying currency into a percentage of the underlying currency by applying a particular exchange rate. The real significance of percentage quoting is that it allows investors to quote, pay premium, and settle, Customized FCOS solely in the underlying currency instead of having to quote and pay premiums in the base currency, and settle the options in the underlying currency. Because the OCC has the ability to settle FCOs in any of the Approved Currencies, allowing investors to also pay the premiums in an Approved Currency does not raise any new market or investor protection concerns.[55]

E. Procedures for Trading Customized FCOs

As stated above, the Commission believes that the procedures outlined above for the trading of Customized FCOs are reasonably designed to provide the benefits of an exchange auction market with features of a negotiated transaction between investors. The Commission recognizes that the Phlx's proposal will permit the trading of FCO contracts of substantial value for which continuous quotation may be difficult to sustain. Accordingly, the Phlx has established procedures for quotes upon request which will be

[46] The Commission notes that in contrast to FLEX Options which have position limits substantially higher than those applicable to non-FLEX Options on the same underlying indexes, positions in Customized FCOs will be aggregated with positions in non-Customized FCOs for position limit purposes. As a result, the Commission is not requiring that the trading of Customized FCOs be implemented as a pilot program nor will the Exchange be required to submit reports to the Commission similar to those required from the exchanges that are trading FLEX Options. *See* FLEX Options Approved Orders, *supra* note 44.

[47] *See* Securities Exchange Act Release No. 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982).

[48] *See* FLEX Options Approved Orders, *supra* note 44.

[49] *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 15, 1991) ("Cross-Rate Approval Order").

[50] *Id.*

[51] *See* Securities Exchange Act Release No. 33582 (February 4, 1994), 59 FR 661 (February 11, 1994).

[52] *See supra* Section II.E (Margin Requirements Applicable to Customized FCOs).

[53] While the proposed margin levels cannot account for every unexpected market movement in each particular Approved Currency pairing, it is important that the margin levels contain some "add-on" provision to cover a short-term sharp movement beyond a two standard deviation coverage of expected movements. The Phlx has attempted to provide this "add-on" through the 4% and 6% margin floors. *Id.*

[54] *See* Cross-Rate Approval Order, *supra* note 49.

[55] The Commission notes that simultaneously with this approval order, the Commission is also approving rule changes proposed by the OCC by which the OCC is adopting the framework necessary to clear and settle Customized FCOs. *See* Securities Exchange Act Release No. 34926 (November 1, 1994) (order approving File Nos. SR-OCC-94-04, SR-OCC-94-05, and SR-OCC-94-07).

publicly disseminated through the OPRA.[56]

Additionally, the Commission believes that allowing assigned ROTs who have previously provided responsive quotes to be able to achieve parity during a response period is a reasonable means by the Phlx of attempting to add liquidity to the market. By making this benefit available to assigned ROTs, the Phlx may be able to encourage ROTs to become assigned to trade Customized FCOs and, once assigned, to act in a manner to create liquid Customized FCO markets. Specifically, assigned ROTs will only be able to benefit from this feature if they act quickly to provide responsive quotes during the response time period which, in turn, may facilitate trading in the Customized FCOs.

In addition, the Commission believes that the requirement that assigned ROTs must respond to a RFQ and must honor their quoted markets for a certain minimum number of a contracts is appropriate. The Commission recognizes that although assigned ROTs are not required to respond to RFQs, the market making obligations under the Phlx's rules, as discussed above, in addition to the ability of Floor Officials and Floor Brokers to require a ROT to respond to RFQs, should help to ensure that assigned ROTs provide adequate liquidity in the market for Customized FCOs. In this regard, the Commission will expect the Phlx to take action against assigned ROTs that fail, on an on-going basis, to provide responsive quotes.[57]

In summary, the Commission believes that based on the unique nature of the FCO market (*i.e.*, that participants are largely institutional investors) that the Phlx has set forth a reasonable proposal that blends the customized nature of the OTC FCO derivatives market with exchange auction market principles. In approving the proposed rule change, the Commission recognizes that some of the procedures, such as the ability of assigned ROTs to establish parity, in some instances, during a request response time, and the minimum contract requirements, deviate from existing rules that apply to Phlx's non-Customized FCO market. Nevertheless, the Commission believes the proposal adequately balances the Exchange's need to attract liquidity to its trading floor with the specialized institutional characteristics of the FCO market. Moreover, to the extent that the Phlx proposal attracts transactions to the Exchange floor that would otherwise be completed in the OTC derivatives market, the investors participating in those transactions will receive the benefits of an exchange auction market, such as full transaction reporting and the clearance and settlement features provided by the OCC. Based on the above, the Commission finds that the proposed rule change is appropriate.

F. Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to allow the Exchange to begin trading Customized FCOs, which have been under review by the Commission for several months, without further delay.[58] The Commission believes that the majority of the changes contained in Amendment No. 3 strengthen the Exchange's original proposal to trade Customized FCOs and serve to minimize the potential for confusion as to the application of the Exchange's rules regarding Customized FCOs. Additionally, each of these changes clarifies the Exchange's original proposal which, the Commission notes, was published for the full comment period without any comments being received.

The Commission also believes that the changes to Rule 1069 proposed in Amendment No. 3 do not raise any significant new issues that require notice prior to approval. Most of the changes to Rule 1069 contained in amendment No. 3 are nonsubstantive and are designed to reflect more clearly the intent of the Exchange's original proposal in order to minimize any potential for confusion among participants in the market for Customized FCOs. The amendment to subsection (d) requiring all ROTs to notify the Exchange's Examination Department immediately if they are not in compliance with the financial requirements of the rule should serve to strengthen the proposal and promote the creation of a fair and orderly market for Customized FCOs. The amendment withdrawing the request for spread margin treatment simply removes a potential reduction in margin for spread transactions.

Similarly, the amendment to Rule 1001 provides certainty as to the exclusion of trading volume in Customized FCOs when determining whether the 150,000 contract position limit is available. The remaining amendment to Rule 1001, Commentary .05, merely clarifies which positions are considered to be on the same side of the market for aggregation purposes.

The changes to Rule 722 contained in Amendment No. 3 are also more restrictive than the proposal as originally noticed. The original proposal provided for three margin tiers applicable to Customized Inverses with the margin for the lowest tier being only 2%. In Amendment No. 3 the Exchange provides that only two tiers will exist and that the lowest applicable margin level will be 4%. As discussed above, the Commission believes that this two-tiered structure and the margin levels proposed are appropriate.[59] The amendments to Rule 722 also merely codify this two-tier approach and clarify the manner by which applicable margin will be determined for each specific Approved Currency combination for Customized Cross-Rates.

The other substantive changes proposed in Amendment No. 3 are merely for the purpose of conforming existing Exchange rules to the procedures provided in new Rule 1069, thus eliminating inconsistencies in the Phlx's rules. The remaining changes contained in Amendment No. 3, as discussed above, correct inaccurate or redundant information presently contained in Phlx Rules 1009 and 1033 and thus raise no new issues.

Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[56] *See supra* note 18. The Commission notes that the proposed procedures for disseminating RFQs, responsive quotes, and completed transactions, through OPRA as administrative text messages are the same procedures used by the options exchanges that trade FLEX Options (*see supra* note 44). By making these administrative text messages available to vendors, transparency in the market for Customized FCOs will be significantly greater than the transparency that exists in the OTC FCO derivatives market.

[57] In addition, the Commission notes that even if a ROT provides responsive quotes, the Exchange can take disciplinary action against the ROT pursuant to Phlx Rule 960 if the ROT quotes markets that the Exchange deems inconsistent with the maintenance of fair and orderly markets.

[58] As noted previously, Amendment No. 3 incorporates the substance of, and withdrew, Amendment Nos. 1 and 2. *See supra* note 7.

[59] *See supra* Section III.C (Customized Cross-Rates).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–94–18 and should be submitted by November 29, 1994.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and Sections 6 and 11A of the Act in particular. In addition, the Commission also finds pursuant to Rule 9b–1 under the Act that Customized FCOs are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[60]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[61] that the proposed rule change (SR–Phlx–94–18), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[62]

Margaret H. McFarland,

Deputy Secretary.

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[60] As part of the original approval process of the FLEX Options framework (see, *e.g., supra* note 44), the Commission delegated to the Director of the Division of Market Regulation the authority to authorize the issuance of orders designating securities as standardized options pursuant to Rule 9b–1(a)(4) under the Act. *See* Securities Exchange Act Release No. 31911 (February 23, 1993), 58 FR 11792 (March 1, 1993). On May 4, 1993, Chairman Breeden, pursuant to Public Law 87–592, 76 Stat. 394 [15 U.S.C. 78d–1, 78d–2], and Article 30–3 of the Commission's Statement of Organization; Conduct and Ethics; and Information and Requests [17 CFR 200.30–3], designated that persons serving in the position of Deputy Director, Associate Director, and Assistant Director, in the Division of Market Regulation, be authorized to issue orders designating securities as "standardized options" pursuant to Rule 9b–1(a)(4). Accordingly, this subdelegation provides the necessary authority for Customized FCOs to be designated as "standardized options" by the Division of Market Regulation. *See* Designation of Personnel to Perform Delegated Functions in the Division of Market Regulation, dated May 4, 1993.

[61] 15 U.S.C. 78s(b)(2) (1988).

[62] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34926; International Series Release No. 739; File Nos. SR–OCC–94–04; SR–OOC–94–05; SR–OCC–94–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Changes Relating to Flexibly Structured Foreign Currency Options, Inverse Foreign Currency Options, Inverse Cross-Rate Foreign Currency Options, and Flexibly Structured Cross-Rate Foreign Currency Options

November 1, 1994.

On April 25, 1994, May 13, 1994, and June 6, 1994, The Options Clearing Corporation ("OCC") filed proposed rule changes (File Nos. SR–OCC–94–04, SR–OCC–94–05, SR–OCC–94–07) respectively with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposals was published in the **Federal Register** on May 20, 1994, July 19, 1994, and July 20, 1994, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposed rule changes.

I. Description

The purpose of the proposed rule changes are to allow OCC to issue, clear, and settle customized strike options on foreign currencies, flexibly structured cross-rate foreign currency option contracts, inverse foreign currency options, and inverse cross-rate foreign currency options.

The first proposal, OCC File No. SR–OCC–94–04, enables OCC to accommodate the clearance and settlement of customized strike options on foreign currencies to be traded on the Philadelphia Stock Exchange ("Phlx").[3] Customarized strike options are a type of flexibly structured options where the underlying security is a foreign currency. Currently, the underlying security for flexibly structured options is an index group. Flexibly structured index options permit the parties to establish for each option trade the expiration date, the exercise style, the exercise price, the cap interval, and the method to be used for establishing the current index value for purposes of settling expiration date exercises. Customized strike options on foreign currencies extend to foreign currency options the ability of the trading parties to designate the exercise price of their choice. Customized strike options are available for all currently listed foreign currency options including cross-rate foreign currency options but excluding cash-spot foreign currency options.[4] The customized strike option contracts also may be either American style or European style options and may have any expiration dates currently available including cross rate dates of up to three years in the future as in long-term options.

To accommodate customized strike options, OCC is adding the definition of "flexibly structured options" to Section 1 of Article XV ("Foreign Currency Options") which will include customized strike options. OCC Rule 602(b) also is being amended to broaden the definition of premium margin to include flexibly structured index options, customized strike options, and other types of flexibly structured options. Currently, the definition only encompasses flexibly structured index options.

The term "FLEX option" in Section 1 ("Definitions") of Article XVII ("Index Options") is being changed to "flexibly structured option" in order to make that term more generic. For the same reason, all references to FLEX options in OCC's by-laws and rules are being changed to flexibly structured options. In addition, the definition of the term flexibly structured option in Section 1 of Article XVII is being modified to clarify that such definition is applicable only to flexibly structured index options. A separate definition of flexibly structured options applicable to foreign currency options is being added to Section 1 of Article XV.

The inverse foreign currency options and inverse cross-rate foreign currency options proposal, OCC File No. SR–OCC–94–05, will enable OCC to clear and settle inverse foreign currency options and inverse cross-rate foreign currency options. Currently, foreign currency option contracts are quoted in U.S. dollars ("USDs"), premium is paid in USDs, and the foreign currency is

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release Nos. 34064 (May 13, 1994), 59 FR 26535, [File No. SR–OCC–94–04] (notice of filing of proposed rule change relating to flexibly structured foreign currency options); 34351 (July 12, 1994), 59 FR 36811, [File No. SR–OCC–94–05] (notice of filing of a proposed rule change relating to inverse foreign currency options and inverse cross-rate options); and 34360 (July 13, 1994), 59 FR 37114, [File No. SR–OCC–94–07] (notice of filing of proposed rule change relating to flexibly structured cross-rate foreign currency options).

[3] Securities Exchange Act Release No. 33959 (April 25, 1994), 59 FR 22698, [File No. SR–Phlx–] (Notice of filing of Phlx's proposal relating to adoption of a customized strike facility for foreign currency options).

[4] The followlng currencies currently underlie foreign currency option contracts: (1) Australian dollars, (2) British pounds, (3) Canadian dollars, (4) German Deutsche marks, (5) European Economic Community currency units, (6) French francs, (7) Japanese yen, and (8) Swiss francs.

delivered upon exercise. Under the proposed rule change, inverse foreign currency and cross-rate foreign currency option contracts will be quoted in the foreign currency, premium will be paid in the foreign currency, and USDs will be delivered upon exercise. For example, the existing French franc ("FF")/USDs foreign currency option contract is quoted in USDs, premium is paid is USDs, and FF are delivered upon exercise. Whereas, the inverse USDs/FF contract will be quoted in FF, the premium will be paid in FF, and USDs will be delivered upon exercise. The proposed inverse cross-rate foreign currency option contract will be the inverse of existing cross-rate foreign currency option contracts.

Inverse foreign currency and cross-rate foreign currency options will be processed and margined like existing foreign currency and cross-rate foreign currency option contracts and in accordance with existing banking arrangements. To accommodate these new foreign currency options only a few changes of OCC's by-laws and rules are needed.

To accommodate inverse for currency and cross-rate foreign currency options, a definition of "currency" is being added to Article I, Section 1 of OCC's By-laws.[5] The term currency will clarify that the price quote, the premium to be paid, and the deliverable or underlying currency for a foreign currency option contract will sometimes have terms of USDs and other times have terms of a foreign currency. Due to this change, where appropriate in OCC's by-laws and rules the references to foreign currency as the deliverable or as the underlying currency for a foreign currency option contract and references to USDs as the trading currency for foreign currency option contract are being changed to the general term currency.

A definition of "settlement time" is being added to the definition section of Article XV to accommodate inverse foreign currency options. Settlement time for foreign currency options will distinguish between foreign currency options settling in the United States and outside the United States.[6] Because of the difference in settlement times, the definition of settlement time in Article I, Section 1 is being amended to clarify that such time does not apply to foreign currency options settling outside the United States.

The definition of the term "class of options" in the definition section of Article XV and Article XXII is being amended to provide that with respect to foreign currency and cash-settled foreign currency options, a class of options means all option contracts of the same type and style covering the same underlying currency and having the same unit of trading and the same trading currency.[7]

The term "trading currency" in Article I, Section 1 of OCC's by-laws is being amended. Trading currency will be currency, rather than foreign currency, in which premium and/or exercise prices are denominated for a class of foreign currency options or cross-rate foreign currency options. The changes will clarify that the two components of the trading currency, the premium and the exercise price, may be either a foreign currency or USDs.

The amendments to Rule 1605(a)(2) concerning the netting scheme will clarify that netting will first occur within the same class of options. To accommodate the changes to the definition of class of options, the proposed changes to Rule 1605(a)(3) will clarify that following the netting of settlement obligations within a class, netting will occur across classes of foreign currency and inverse foreign currency options.

The Introduction of Chapter XVI, which governs foreign currency options, is being amended to clarify that Chapter XVI is applicable only to option contracts where either the trading currency or the underlying security is a foreign currency and the other side of the contract is USDs. The Introduction of Chapter XXIII, which governs cash-settled foreign currency options, is being amended to clarify that Chapter XXIII is applicable only to cash-settled option contracts where either the trading currency or the underlying security is a foreign currency. The Introduction to Chapter XXI, which governs cross-rate foreign currency options, is being amended to clarify that with the beginning of percentage quoting at the Phlx, premium and exercise prices of cross-rate foreign currency options will not always be in the same currency.

The flexibility structured cross-rate foreign currency options proposal, OCC File No. Sr–OCC–94–07, enables OCC to issue, clear, and settle new flexibly structured cross-rate foreign currency option contracts proposed for trading by the Phlx through its customized option facility.[8] Under the proposal, options may be traded on any combination of currencies currently underlying foreign currency option contracts. Because these new products will be margined and settled like the existing cross-rate option contracts, OCC's by-laws and rules do not need to be revised.

II. Discussion

The Commission believes the proposals are consistent with the purposes and requirements of Section 17A of the Act.[9] Specifically, Section 17A(a)(2) of the Act [10] directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

The over-the-counter ("OTC") market for foreign currency options has developed, in part, to meet the needs of brokers and investors that require increased flexibility for the purpose of satisfying particular investment objectives. OCC's issuing, clearing, and settling of customized strike options should bring into the national clearance and settlement system options transactions that otherwise would be cleared and settled outside the system. Thus, brokers and investors will have the ability to tailor options transactions to meet their specific needs and at the same time, will have the benefit of having those transactions cleared and settled through OCC with its risk analysis and risk reduction procedures.

OCC has represented that flexibility structured foreign currency options can be treated and processed like the current foreign currency option products. Therefore, OCC may implement the clearance and settlement of flexibility structured foreign currency options with only minimal changes to its by-laws and rules. Since these proposed foreign currency products are a natural extension of the foreign currency products currently cleared by OCC, OCC

[5] Currency is defined as any standard unit of the official medium of exchange of a sovereign government including the European Currency Unit ("ECU").

[6] Foreign currency options settling in the United States will settle at 9:00 A.M. Central Time on the first business day immediately following the day on which OCC receives a report of a matched trade with respect to such transaction from the exchange on which such transaction was effected. Foreign currency options settling outside the United States will settle at 11:00 A.M. local time in the country of origin of the trading currency, or at such other time as OCC may specify, on the first business day in that country immediately following the day on which OCC receives a report of a matched trade with respect to such transaction from the exchange where the trade occurred.

[7] Under the amended definition, existing foreign currency contracts covering the same underlying foreign currency will be in one class, and the inverse contracts, which will have a different trading currency, will be in another class.

[8] For a description of the Phlx proposed rule change, refer to Securities Exchange Act Release No. 34308 (July 5, 1994), 59 FR 35551, [File No. SR–Phlx–94–18] (notice of filing of proposed rule change).

[9] 15 U.S.C. 78q–1 (1988).

[10] 15 U.S.C. 78q–1(a)(2) (1988).

should have little difficulty processing these products.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposals are consistent with Section 17A of the Act.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule changes (File Nos. SR–OCC–94–04, SR–OCC–94–05, SR–OCC–94–07) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27564 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Rel. No. IC–20677; No. 812–8910]

Lexington Emerging Markets Fund, Inc., et al.

November 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lexington Emerging Markets Fund, Inc. ("Fund"), Lexington Natural Resources Trust ("Trust"), and Lexington Management Corporation ("LMC") (collectively "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

SUMMARY OF APPLICATION: Applicants seek an order exempting themselves and certain affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") and their separate accounts ("Separate Accounts") to the extent necessary to permit series of shares of any current or future investment series of the Trust and the Fund to be sold to and held by Separate Accounts funding variable annuity and variable life insurance contracts issued by the Participating Insurance Companies.

FILING DATE: The application was filed on March 22, 1994, and amended on September 30, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549.

APPLICANTS: Lawrence Kantor, Managing Director, Lexington Management Corporation, Park 80 West—Plaza Two, Saddle Brook, New Jersey 07662.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts Business Trust registered under the 1940 Act as an open-end management investment company (File No. 33–26116). The Trust's capitalization consists of an unlimited number of shares of beneficial interest, no par value, representing an interest in one underlying portfolio of investments. The Trust is managed by its Board of Trustees.

2. The Fund is registered under the 1940 Act as an open-end management investment company (File No. 33–73520). The Fund's capitalization consists of one billion shares of authorized common stock, of which five hundred million are designated "Lexington Emerging Market Fund Series" ("Existing Portfolio"), and five hundred million are unissued and unclassified. The Board of Directors of the Fund is authorized to classify or reclassify any unissued shares of the Fund ("New Portfolios") (together with Lexington Emerging Market Fund Series, "Portfolios").

3. The Portfolios will serve as investment vehicles for various types of variable annuity and variable life insurance contracts ("Variable Contracts"). Portfolio shares will be offered to Separate Accounts of certain affiliated and unaffiliated Participating Insurance Companies which enter into Participation Agreements with the Portfolios and LMC. The Applicants represent that Portfolio shares will be offered only to individual Separate Accounts issuing variable annuity contracts until the Commission issues its order granting the requested relief.

4. LMC serves as investment adviser to the Trust, the Fund and each Existing Portfolio. Lexington Funds Distributor, Inc. ("LFD") serves as distributor for the Existing Portfolios. LMC is a registered investment adviser under the Investment Advisers Act of 1940. LMC and LFD are each a wholly-owned subsidiary of Piedmont Management Company, Inc. ("Piedmont"), a publicly traded corporation.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Exemptive relief is sought by applicants and affiliated and unaffiliated Participating Insurance Companies and their Separate Accounts to the extent necessary to permit mixed and shared funding.

2. Rule 6e–2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as a unit investment trust to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the rule also extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

3. The exemptions granted by Rule 6e–2(b)(15) are available only to a management investment company underlying a separate account ("underlying fund") that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e–2(b)(15) is not available to the separate account issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common underlying fund as an investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as "mixed funding."

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[11] 15 U.S.C. 78q–1 (1988).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

4. Additionally, the relief granted by Rule 6e–2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to unaffiliated life insurance company separate accounts funding variable contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

5. Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to separate accounts registered as a unit investment trust that is offering flexible premium variable life insurance contracts. The exemptive relief extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. These exemptions are available only where the underlying fund of the separate account offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company * * *." Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

6. For these reasons, Applicants seek an order under section 6(c) of the 1940 Act. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

7. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Subparagraphs (b)(15)(i) and (ii) of Rules 6e–2 and 6e–3(T) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by subparagraph (b)(15(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

8. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e–2 and 6e–3(T) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants further submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various unaffiliated Participating Insurance Companies that may utilize the Portfolios as the funding medium for variable contracts because of mixed and shared funding.

9. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances.[1]

10. Under subparagraph (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T), the insurance company may disregard voting instructions of its contractowners in connection with the voting of shares of an underlying fund under certain limited circumstances. Voting instructions may be disregarded if they would cause the underlying fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the underlying fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each Rule.

11. Under subparagraph (b)(15)(iii)(B) of Rules 6e–2 and 6e–3(T), an insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in the underly8ng fund's investment objectives, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of each Rule.

12. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

13. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that the potential for disagreement is limited by the requirements in Rules 6e–2 and 63–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

14. Applicants submit that mixed funding and shared funding should benefit variable contractowners by: (a) Eliminating a significant portion of the

[1] Applicants request no relief for variable annuity separate accounts from the disqualification or pass-through voting provisions.

costs of establishing and administering separate funds; (b) allowing for a greater amount of assets available for investment by the Portfolios and the Trust, thereby promoting economies of scale, permitting increased safety through greater diversification, and/or making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each Portfolio will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

15. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that each of the Portfolios will be managed to attempt to achieve its investment objective and not to favor or disfavor any particular Participating Insurance Company, separate account, or type of insurance product. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions:

The Applicants have consented to the following conditions:

1. A majority of the Board of each of the Fund and the Trust shall consist of persons who are not "interested persons" of either the Fund or the Trust, respectively, as defined by Section 2(a)(19) of the 1940 Act and Rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any Director(s) or Trustee(s) then the operation of this conditions shall be suspended: (i) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board of each of the Fund and the Trust will monitor the Fund and the Trust for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in either of the Portfolios. A material irreconcilable conflict may arise for a variety of reasons, including: (a) State insurance regulatory authority action; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of a Portfolio are being managed; (e) a difference among voting instructions given by variable annuity and variable life insurance contractowners; or (f) a decision by a Participating Insurance Company to disregard contractowners' voting instructions.

3. Participating Insurance Companies and LMC will report any potential or existing conflicts, of which they become aware, to the Board of either the Fund or the Trust, as appropriate. Participating Insurance Companies and LMC will be obligated to assist the relevant Board in carrying out its responsibilities under these conditions by providing the relevant Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the relevant Board will be a contractual obligations of all Participating Insurance Companies investing in a Portfolio under their Participation Agreements, and those Agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If a majority of the Board of the Fund or the Trust, or a majority of the Independent Directors or Trustees, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of Independent Directors or Trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Portfolios and reinvesting those assets in a different investment medium (including another Applicant, if any) or submitting the question whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies that votes in favor of such segregation), or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of LMC (on behalf of one or more of the Portfolios), to withdraw its Separate Account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by the Board of the Fund or the Trust that an irreconcilable material conflict exists and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements, and these responsibilities will be carried out with a view only to the interests of the contractowners.

For purposes of condition "4.", a majority of Independent Directors or Trustees shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Portfolios or LMC be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition "4." to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contractowners materially affected by the irreconcilable material conflict.

5. The determination by the Board of the Fund or the Trust of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies in the Fund or the Trust, respectively.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contractowners. Accordingly, Participating Insurance Companies will vote shares of a Portfolio held in their Separate Accounts in a manner consistent with timely voting instructions received from

contractowners. Each Participating Insurance Company also will vote shares of a Portfolio held in its Separate Accounts for which no timely voting instructions from contractowners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts participating in a Portfolio calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Portfolio shall be a contractual obligation of all Participating Insurance Companies under their Participating Agreements.

7. Each Portfolio will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Portfolio shall disclose in its Prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund annuity and life insurance contracts of Participating Insurance Companies that may or may not be affiliated with one another; (b) because of differences of tax treatment or other considerations, the interests of various contractowners might at some time be in conflict; and (c) a Board of the Fund or the Trust, as appropriate, will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of the Fund or the Trust regarding potential or existing conflicts, and all action of a Board with respect to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of other appropriate records of the relevant Board, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3(T) is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Portfolios and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. The Portfolios will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Portfolios), and in particular each Portfolio either will provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or, as each Portfolio currently intends, comply with Section 16(c) (although neither the Fund nor the Trust are trusts described in this section) as well as with Section 16(a) and, if and when applicable, Section 16(b). Further, each Portfolio will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may adopt with respect thereto.

11. The Participating Insurance Companies and/or LMC, shall at least annually submit to the Board of the Fund and the Trust such reports, materials or data as each Board may reasonably request so that such Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by a Board. The obligation of the Participating Insurance Companies to provide these reports, materials, and data upon reasonable request of a Board shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27633 Filed 11–7–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

License No. 10/10–0190]

Shaw Venture Partners III, L.P.; Issuance of a Small Business Investment Company License

On May 27, 1994, a notice was published in the **Federal Register** (59 FR 27645) stating that an application had been filed by Shaw Venture Partners III, L.P., 400 Southwest Sixth Ave., Suite 1100, Portland, OR 97204 with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business June 26, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 10/10–0190 on September 26, 1994, to Shaw Venture Partners III, L.P. to operate as a small business investment company.

The 99% limited partner of the Licensee will be U.S. Bancorp, and the Licensee will have $30 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: October 28, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–27614 Filed 11–7–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2113]

Advisory Committee to the United States Section of the International Commission for the Conservation of Atlantic Tunas

The Advisory Committee to the United States Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT) will meet on November 15, 1994, from 8:30 a.m. to 6:30 p.m. at the Sheraton International Hotel at Baltimore Washington International Airport in Linthicum, Maryland. The meeting will be open to all interested members of the public. The meeting will consider recommendations to the U.S. delegation to the Annual Meeting of the

International Commission for the Conservation of Atlantic Tunas, which will be held in Madrid, Spain November 28–December 2, 1994. We regret the short notice in announcing this meeting, delayed by the late receipt of the Commission meeting agenda.

The Advisory Committee will also meet November 16, 1994 from 8:30 a.m. to 3:00 p.m. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the Annual Meeting of the International Commission for the Conservation of Atlantic Tunas, to be held in Madrid November 28—December 2, 1994. The members of the Advisory Committee will examine various options for the negotiating position at the Annual Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close the November 16 session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Marine Conservation (OES/OMC), Room 7820, U.S. Department of State, Washington, DC 20520–7818. Mr. Hallman can be reached by telephone on (202) 647–2335 or by FAX (202) 736–7350.

Dated: November 1, 1994.

David A. Colson,

Deputy Assistant Secretary for Oceans Affairs.

[FR Doc. 94–27598 Filed 11–7–94; 8:45 am]

BILLING CODE 4710–09–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the Affordable Housing Advisory Board. The meeting, which will be held in two sessions, is open to the public.

DATES: The Affordable Housing Advisory Board will hold its meeting in two sessions on November 21 and 22, 1994, in Atlanta, Georgia:

1. November 21--Planning session.

2. November 22—General session.

ADDRESSES: The sessions of the meeting will be held at the following locations:

1. November 21 Planning Session—Atlanta Marriott Marquis, 265 Peachtree Center Avenue, 9 a.m. to noon.

2. November 22 General Session—Federal Reserve Bank of Atlanta, 104 Marrietta Street, Conference Center, third floor, 8:30 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 14(b) of the Resolution Trust Corporation Completion Act, Public Law No. 103–204, established the Affordable Housing Advisory Board (AHAB) to advise the Thrift Depositor Protection Oversight Board (Oversight Board) and the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) on policies and programs related to the provision of affordable housing. The Board consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegate; the Chairperson of the Oversight Board, or delegate; four persons appointed by the Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two former members of the National Housing Advisory Board. The AHAB's charter was issued March 9, 1994.

Agendas: An agenda will be available at each session of the meeting. At the November 21 planning session, the AHAB will review the following: its short- and long-term goals, as established at the October 3 planning session; Resolution Trust Corporation (RTC) and FDIC housing disposition processes; financing issues related to a unified RTC/FDIC affordable housing program, and bank participation in affordable housing programs. Members of the public who attend the planning session will be asked to reserve questions or comments until the second session of the meeting on the following day. At the November 22 general session, the AHAB will address principal issues on the transition of the RTC's affordable housing program into the FDIC and the National Advisory Board's affordable housing recommendations from the Series 17 Regional Advisory Board meetings held throughout the country from September 13 through September 29. In addition, the AHAB will hear from technical assistance advisors on the RTC's Affordable Housing Disposition Program, reports on FDIC sales and appraisal process and an update on the Housing Opportunity Hotline. The AHAB's chairperson or its Delegated Federal Officer may authorize a member or members of the public to address the AHAB during the public forum portion of the second session.

Statements: Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the November 22 general session of the meeting. Seating is available on a first-come first-served basis for each session of the meeting.

Dated: November 3, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–27645 Filed 11–7–94; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Civil Tiltrotor Development; Advisory Committee; Environment & Safety Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Environment & Safety Subcommittee will be on November 14, 1994 in Washington, D.C. at Airports Council International headquarters, 1775 K Street NW., Suite 500, Washington, D.C. The meeting will begin at 10:00 a.m. and conclude by 5:00 p.m.

The agenda for the Environment & Safety Subcommittee meeting will include the following:

(1) Presentations on enviornmental and safety issues

(2) Review issue papers and draft report material.

(3) Review Subcommittee Assumptions.

(4) Review Subcommittee Work Plan/Schedule.

Persons who plan to attend the meeting should notify Mrs. Karen Braxton at 202–267–8759 or Ms. Deborah Ogunshakin on 202–267–9451. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mrs. Braxton or Ms. Ogunshakin at least three days prior to the meeting.

Issued in Washington, D.C., October 27, 1994.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 94–27644 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 182; Fourth Meeting; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource (ACR)

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 182 meeting to be held January 23–24, 1995, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Review and approval of minutes from third meeting held September 20–21, 1994; (4) Report on TMC response to terms of reference recommendation; (5) Identify and discuss attributes of the ACR which distinguish if from an "ordinary Computing Platform". Consider both "Basic" and "Discretionary" attributes; (6) Explanation of the FAA equipment qualification and aircraft certification procedures; (7) Establish timetable for the development of the MOPS document; (8) Refine the issues list begun at the second meeting; (9) Review and expand glossary of term unique to avionics computing resource; (10) Other business; (11) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on November 2, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–27622 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Transit Administration

[Docket No. 94–D]

Notice of Request for Comments on the Inclusion of Security Data Reporting in the National Transit Database

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) proposes to revise its safety reporting form to include security information as part of its annual National Transit Database (Section 15) reporting system.

Among other things, the Omnibus Anti-Crime legislation (Pub. L. 103–322) signed by President Clinton on September 13, 1994, reinforces the need to fight crime and to increase security in existing and future transportation systems. Moreover, FTA's Strategic Plan includes a strategy to "Maximize Security and Safety of Transit Systems for Service Users". The first goal under this strategy is to improve personal security.

This Notice thus solicits comments from transit agencies on the proposed initiation of reporting of security data in the National Transit Database (Section 15) for the 1995 Report Year, including the existing availability of the data, costs involved, and the relationship of the proposed reporting requirements to other crime reporting systems, for example, the Federal Bureau of Investigation's Uniform Crime Reporting System (UCR), etc.

DATES: Written comments must be received on or before December 8, 1994.

ADDRESSES: Comments should be sent to Docket Number 94–D, Room 9316, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Edward Fleischman, Director, Office of Capital and Formula Assistance (202) 366–1662 or Marvin Futrell, Chief, Audit Review and Analysis Division, (202) 366–6471.

SUPPLEMENTARY INFORMATION:

A. Background

The National Transit Database (Section 15) Transit Safety Form (405) for Report Year 1995 is proposed to be expanded. The FTA seeks to collect security information as part of its annual National Transit Database reporting system, the Uniform System of Accounts and Records and Reporting System. Among other things, the Omnibus Anti-Crime legislation (Pub. L. 103–322), signed by President Clinton on September 13, 1994, reinforces the need to fight crime and to increase security in existing and future transportation systems.

Moreover, FTA's Strategic Plan includes a strategy to "Maximize Security and Safety of Transit Systems for Service Users". The first goal under this strategy is to improve personal security.

FTA's regulation regarding the Uniform System of Accounts and Records and Reporting System is at 49 CFR part 630. In particular, 49 CFR part 630(c) provides that the Reporting System is subject to periodic revision, and that a Notice of certain changes or revisions will be published in the **Federal Register.**

Accordingly, set forth below is a summary of the new data and draft of the proposed reporting form the FTA proposes to include in the information that must be sent to FTA as part of the Section 15 annual report. This information will be mailed to grantees early in 1995, and may include changes in response to comments to this Notice. FTA particularly seeks comments on the scope of the draft form and the adequacy of the information being sought. Comments are sought on how much the data should be stratified and whether there should be thresholds for reporting based on a transit system's size.

B. Description of New Security Elements for Section 15 Reporting

The Security data are proposed to be expanded to include security data reported by location, i.e., In Vehicle, In Station and In Other Transit Property; and by type of offense, i.e., Arson, Assault, Burglary, Homicide, Larceny/Theft, Motor Vehicle Theft, Robbery, Sex Offenses/Forcible, Vandalism, Loitering/Vagrancy, Disorderly Conduct, Driving Under the Influence (DUI), Drunkenness, Trespass, and Fare Evasion. The data would be reported by incidents, fatalities and injuries for each directly operated or purchased transportation mode and also by both patron and non-patron.

The proposed form is as follows:

BILLING CODE 4910–51–P

Section 15 ID					Transit Safety & Security Form (405A) - Safety				Mode			
	a	b	c	d	e	f	
line No.	Items	Incidents	Fatalities		Injuries		line No.
	COLLISIONS		Patrons	Others	Patrons	Others	
01	Collision with other vehicles						01
01a	(at grade crossing)	( )	( )	( )	( )	( )	01a
02	Collision with objects						02
02a	(at grade crossing)	( )	( )	( )	( )	( )	02a
03	Collision with people						03
03a	(at grade crossing)	( )	( )	( )	( )	( )	03a
03b	(attempt/successful suicide)	( )	( )	( )	( )	( )	03b
	NON-COLLISIONS						
	Derailments						
04	Derailment/bus going off road						04
	Personal Casualties						
05	Parking facility						05
06	Inside vehicle						06
07	On right-of-way						07
08	Boarding and alighting vehicle						08
08a	(associated with lift)	( )	( )	( )	( )	( )	08a
09	In station/bus stop						09
09a	(associated with escalator)	( )	( )	( )	( )	( )	09a
09b	(associated with elevator)	( )	( )	( )	( )	( )	09b
	Fires (no-thresholds)						
10	Inside vehicle						10
11	In station						11
12	On right-of-way						12
	EMPLOYEE CASUALTIES		Employee Fatalities		Employee Injuries		
13	Inside vehicle						13
14	On right-of-way						14
15	Maintenance facility/yard						15
16	Other						16
17	TOTAL OF EMPLOYEE SAFETY ITEMS						17
18	TOTAL OF OTHERS SAFETY ITEMS						18
19	TRANSIT PROPERTY DAMAGE		$				19

Date Prepared - - Date Updated - -

Report Year 1995

Section 15 ID ———— Transit Safety & Security Form (4058) - Security Mode ———

a		b	c	d	e	f	g	h	i	j
PATRON EMPLOYEE AND OTHERS SECURITY		In Vehicle			In Station			Other Tr. Property		
		Inc.	Inj.	Death	Inc.	Inj.	Death	Inc.	Inj.	Death
Group "A" Offenses										
20 Arson	Patrons									
	Employees									
	Others									
21 Assault	Patrons									
	Employees									
	Others									
22 Burglary	Patrons									
	Employees									
	Others									
23 Robbery	Patrons									
	Employees									
	Others									
24 Larceny/Theft	Patrons									
	Employees									
	Others									
25 Sex Offenses, Forcible	Patrons									
	Employees									
	Others									
26 Motor Veh. Theft	Patrons									
	Employees									
	Others									
27 Homicide	Patrons									
	Employees									
	Others									
28 Vandalism	Patrons									
	Employees									
	Others									
Group "B" Offenses										
29 Loitering	Patrons									
	Others									
30 Drunkenness	Patrons									
31 Disorderly Conduct	Patrons									
32 Fare Evasion	Patrons									
33 Trespassing	Others									
34 DUI	Employee									

Report Year 1995

BILLING CODE 4910-51-C

Definitions relating to location of an incident would be as follows:

In Vehicle—An incident occurring within a transit agency revenue vehicle.

In Station—An incident occurring at a transit station or stop.

Other Transit Property—An incident occurring at facilities which are directly controlled by a transit agency (agency is responsible for cleaning or maintaining) or provided to a transit agency for its use by another public or private entity (formal/informal agreement with the owner wherein services or facilities are provided to benefit the transit agency) other than stations and vehicles.

Definitions relating to type of incident would be as follows:

Incident—Security related occurrence involving fatalities, injuries or property damage.

Fatality—A death confirmed within 30 days directly related to a security incident.

Injury—Any physical damage or harm to a person which results in the need for medical treatment related to a security incident.

Definitions relating to type of offense would be as follows:

Group A—Offenses perpetrated against other individuals or property.

Arson—To unlawfully and intentionally damage, or attempt to damage, any real or personal property by fire or incendiary device.

Assault—An unlawful attack by one person upon another.

Burglary—The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

Homicide—The killing of one or more human being(s) by another.

Larceny/Theft—The unlawful taking, carrying, leading or riding away of property from the possession, or constructive possession, of another person.

Motor Vehicle Theft—The theft of a motor vehicle. Note: A "motor vehicle" is a self-propelled vehicle that runs on the surface of land and not on rails, and which fits one of the following property descriptions: automobiles, buses, recreational vehicles, trucks, or other.

Robbery—The taking, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of another person by force or threat of force or violence and/or by putting the victim in fear of immediate harm.

Sex Offenses, Forcible—Any sexual act directed against another person, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent.

Vandalism—To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or person having custody or control of it.

Group B—Offenses not involving other individuals or property.

Loitering/Vagrancy—The violation of a court order, regulation, ordinance or law requiring the withdrawal of persons from the streets or other specified areas; prohibiting persons from remaining in an area or place in an idle or aimless manner; or prohibiting persons from going from place to place without visible means of support. Note: This offense includes "Begging" and "Vagabondage". Persons prosecuted on charges of being a "Suspicious Character", "Suspicious Person", etc., are also to be included.

Disorderly Conduct—Any behavior that tends to disturb the public peace or decorum, scandalize the community, or shock the public sense or morality.

Driving Under the Influence (DUI)—Driving or operating a motor vehicle or common carrier while mentally or physically impaired as the result of consuming an alcoholic beverage or using a drug or narcotic.

Drunkenness—To drink alcoholic beverages to the extent that one's mental faculties and physical coordination are substantially impaired. Note: This offense includes "Drunk and Disorderly", "Common Drunkard", "Habitual Drunkard", and "Intoxication".

Trespass—To unlawfully enter land, a dwelling, or other real property.

Fare Evasion—The unlawful use of transit facilities by riding without paying the applicable fare.

Issued on: November 3, 1994.

Gordon J. Linton,

Administrator.

[FR Doc. 94–27677 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–51–P

National Highway Traffic Safety Administration

[Docket No. 94–89; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1990 Porsche 944 S2 Cabriolet Convertible Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990 Porsche 944 S2 Cabriolet convertible passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1990 Porsche 944 S2 Cabriolet convertible that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 8, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Highway Traffic Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas

("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1990 Porsche 944 S2 Cabriolet convertible passenger cars are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1990 Porsche 944 S2 Cabriolet convertible that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power-Operated Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour, or replacement of the speedometer/odometer with the U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) replacement of the headlamp assemblies with the U.S.-model component and installation of U.S.-model retaining rings and wiring harness; (b) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* required warning statement must be permanently etched onto the face of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the ignition switch.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* (a) Replacement of the driver's seat belt latch with one containing a seat belt warning microswitch and installation of a seat belt warning system; (b) installation of a U.S.-model passive restraint system. The petitioner states that the modifications necessary to install such a restraint system include replacement of the steering wheel with a U.S.-model component, installation of a control unit with wiring harness and contact support, installation of two vehicle impact sensors and driver's and passenger's side air bags, and replacement of the dashboard with one that incorporates driver's and passenger's side knee bolsters. The petitioner further states the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible is designed so that an air bag system can be readily installed, without the need for structural modifications. The petitioner also notes that the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible is equipped with Type II seat belts in all four seating positions, and that it complies with the standard's requirements for rear seating positions.

Additionally, the petitioner states that U.S.-model shock absorbers must be installed behind the front and rear bumpers to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Station, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 2, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27600 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–90; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1993 Volvo 940 GL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Volvo 940 GL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for decision that a 1993 Volvo 940 GL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 8, 1994

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1993 Volvo 940 GL passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1993 Volvo 940 GL that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Volvo 940 GL to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Volvo 940 GL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Volvo 940 GL is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Level Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistence*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1993 Volvo 940 GL complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer, which is calibrated in kilometers, with a U.S.-model component calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a factory-supplied high mounted stop lamp assembly.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) installation of a knee bolster to augment the vehicle's air bag based passive restraint system, which otherwise conforms to the standard.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27599 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 215

Tuesday, November 8, 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).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: 10:00 a.m., November 9, 1994.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 619th Meeting—November 9, 1994, Regular Meeting (10:00 a.m.)

CAH–1.
Docket No. DI94–5–001, Cameron Sharpe
CAH–2.
Omitted
CAH–3.
Project No. 4632–018, Clifton Power Corporation
CAH–4.
Project No. 8066–027, American Hydro Power Company
CAH–5.
Project No. 10551–044, City of Oswego, New York
CAH–6.
Project Nos. 2391–002, 2425–002 and 2509–002, Potomac Edison Company
CAH–7.
Project No. 4055–017, Vernon F. Ravenscroft
CAH–8.
Project Nos. 10481–010 and 10482–013, Orange and Rockland Utilities, Inc.
CAH–9.
Project No. 10567–003, Barrish & Sorenson Hydroelectric Company, Inc.
CAH–10.
Omitted
CAH–11.
Project No. 2306–015, Citizens Utilities Company
CAH–12.
Project No. 10199–001, City of Klamath Falls
CAH–13.
Omitted

Consent Agenda—Electric

CAE–1.
Docket No. ER94–1474–000, Pepperell Power Association Limited Partnership
CAE–2.
Docket No. ER94–1673–000, PECO Energy Company
CAE–3.
Docket No. ER94–1156–001, Central Illinois Public Service Company
CAE–4.
Docket No. FA91–53–001, New England Power Company
CAE–5.
Docket Nos. ES94–29–004 and ES94–32–003, Robbins Resource Recovery Partners, L.P.
CAE–6.
Docket No. ER94–1448–001, Northeast Empire Limited Partnership #2
CAE–7.
Omitted
CAE–8.
Omitted
CAE–9.
Docket No. ER94–1370–001, Vermont Yankee Nuclear Power Corporation
CAE–10.
Docket No. EG94–105–000, The New World Power Company (Dyffryn Brodyn) Limited
CAE–11.
Docket No. EG94–106–000, The New World Power Company (4 Burrows) Limited
CAE–12.
Docket No. EG94–107–000, The New World Power Company Limited
CAE–13.
Docket No. EG94–108–000, The New World Power Company (Canton Moor) Limited
CAE–14.
Docket No. EG94–102–000, Vista Energy, L.P.
CAE–15.
Docket No. EG94–103–000, Crown Energy, L.P.
CAE–16.
Omitted
CAE–17.
Docket No. EG94–97–000, Wartsila Diesel Dominicana, S.A.
CAE–18.
Docket No. EG94–98–000, Netherlands Generating Trust I
CAE–19.
Docket No. EG94–99–000, Netherlands Generating Trust III
CAE–20.
Docket No. EG94–100–000, Netherlands Generating Trust IV
CAE–21.
Docket No. EG94–101–000, Netherlands Generating Trust II
CAE–22.
Omitted
CAE–23.
Docket No. EL94–81–000, Oglethorpe Power Corporation v. Georgia Power Company and Municipal Electric Authority of Georgia v. Georgia Power Company
CAE–24.
Docket No. EL92–12–000, Wisconsin Public Service Corporation
CAE–25.
Docket Nos. EL94–58–000 and QF87–249–004, L'Energia, Limited Partnership
CAE–26.
Docket No. ER94–975–000, New England Power Company
CAE–27.
Docket Nos. EL92–25–000 and EL93–30–000, Interstate Power Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP95–9–000, Canyon Creek Compression Company
CAG–2.
Docket No. TM95–3–21–000, Columbia Gas Transmission Company
CAG–3.
Docket No. RP95–11–000, K N Interstate Gas Transmission Company
CAG–4.
Docket No. RP95–13–000, El Paso Natural Gas Company
CAG–5.
Docket No. PR94–18–000, Cranberry Pipeline Corporation
CAG–6.
Docket Nos. RP93–147–005, RP94–201–000, RP94–175–000, RP91–203–000, (Phase III), CP94–153–000 and RP92–132–000, Tennessee Gas Pipeline Company
CAG–7.
Docket No. RP91–203–047, Tennessee Gas Pipeline Company
CAG–8.
Docket No. RP93–147–006, Tennessee Gas Pipeline Company
CAG–9.
Docket Nos. RP93–148–000, 001, 002, RP93–147–002 and RP93–151–005, Tennessee Gas Pipeline Company
CAG–10.
Docket Nos. RP94–197–000, RP93–151–007 and RP94–309–000, Tennessee Gas Pipeline Company
CAG–11.
Docket Nos. RP94–197–002 and RP93–151–013, Tennessee Gas Pipeline Company
CAG–12.
Docket No. RP94–203–000, Tennessee Gas Pipeline Company
CAG–13.

Docket No. RP94–340–000, Carnegie Natural Gas Company
CAG–14.
Docket Nos. RP93–99–000, 003 and 004, Colorado Interstate Gas Company
CAG–15.
Docket Nos. RP93–186–000 and 001, Carnegie Natural Gas Company
CAG–16.
Docket No. RP95–08–000, NorAm Gas Transmission Company
CAG–17.
Docket No. RP94–365–003, Williams Natural Gas Company
CAG–18.
Docket No. RP94–374–001, Trunkline Gas Company
CAG–19.
Docket Nos. AC94–65–001 and AC94–121–001, Columbia Gulf Transmission Company
CAG–20.
Docket Nos. RP94–380–001 and RP94–67–013, et al., Southern Natural Gas Company
CAG–21.
Docket Nos. RP90–137–017, TM93–6–49–008, RP93–175–005 and RS92–13–000, Williston Basin Interstate Pipeline Company
CAG–22.
Docket No. RP91–166–026, Northwest Pipeline Corporation
CAG–23.
Docket Nos. TM91–6–37–005 and TM92–7–37–003, Northwest Pipeline Corporation
CAG–24.
Docket Nos. RP94–183–004, CP79–374–012 and CP79–382–014, Southern Natural Gas Company
CAG–25.
Docket No. RP85–122–023, Colorado Interstate Gas Company
CAG–26.
Docket Nos. RP94–309–002, RP93–151–014 and RP94–309–001, Tennessee Gas Pipeline Company
CAG–27.
Docket No. RP93–166–003, Tennessee Gas Pipeline Company
CAG–28.
Docket No. RP94–176–001, Tennessee Gas Pipeline Company
CAG–29.
Omitted
CAG–30.
Docket No. GP95–1–000, State of California, Division of Oil and Gas, Tight Formation Area Determination, FERC No. JD93–00528T (California-2)
CAG–31. Docket No. MG88–14–004, Black Marlin Pipeline Company
Docket No. MG88–3–009, Florida Gas Transmission Company
Docket No. MG88–7–006, Northern Natural Gas Company
Docket No. MG88–9–008, Transwestern Pipeline Company
CAG–32.
Docket No. CP89–2173–004, Arkla Energy Resources Company and Mississippi River Transmission Corporation
Docket No. CP89–2195–004, ANR Pipeline Company
CAG–33
Docket No. CP93–500–001, Natural Gas Pipeline Company of America
CAG–34.
Docket No. CP94–137–001, Tennessee Gas Pipeline Company
CAG–35.
Docket No. CP94–161–002, Avoca Natural Gas Storage
CAG–36.
Docket No. CP91–2206–009, Tennessee Gas Pipeline Company
CAG–37.
Docket Nos. CP92–498–004 and 000, Trunkline Gas Company
CAG–38.
Docket Nos. CP93–57–002 and CP92–189–002, Superior Offshore Pipeline Company
CAG–39.
Docket Nos. CP93–79–003 and 005, Mid Louisiana Gas Company and Fairbanks Gathering Company
CAG–40.
Docket No. CP93–281–001, Paiute Pipeline Company
CAG–41.
Docket No. CP93–306–001, Caprock Pipeline Company
Docket No. CP94–55–001, Transwestern Pipeline Company
Docket No. CP94–302–001, Northern Natural Gas Company
CAG–42.
Docket No. CP93–326–001, Eastern American Energy Corporation
Docket No. CP93–328–001, Columbia Gas Transmission Corporation
CAG–43.
Docket No. CP93–567–001, Texas Gas Transmission Corporation
CAG–44.
Docket No. CP94–36–001, Arkla Gathering Services Company
CAG–45.
Docket No. CP94–147–001, Williams Natural Gas Company Docket No. CP94–163–001, Kansas Gas Supply Corporation
CAG–46.
Docket No. CP94–201–001, BCF Gas, Ltd.
Docket No. CP94–107–001, NorAm Gas Transmission Company
CAG–47.
Docket Nos. CP93–232–000, CP93–256–000 and CP93–275–000, Alabama-Tennessee Natural Gas Company
CAG–48.
Docket No. CP94–214–000, Natural Gas Pipeline Company of America
CAG–49.
Docket No. CP94–219–000, Tennessee Gas Pipeline Company
CAG–50.
Docket No. CP94–656–000, General Services Administration
CAG–51.
Docket Nos. CP93–637–000 and 001, ANR Pipeline Company
CAG–52.
Docket No. CP94–79–000, Panhandle Eastern Pipe Line Company
CAG–53.
Docket No. CP94–550–000, Washington Natural Gas Company
CAG–54.
Dooket No. CP94–145–000, Hobbs Processing Company
Docket No. CP94–142–000, Northern Natural Gas Company
CAG–55.
Docket No. CP94–20–000, Field Gas Gathering Inc.
Docket Nos. CP94–19–000 and RS92–82–000, Superior Offshore Pipeline Company
CAG–56.
Docket No. CP94–279–000, Minerals, Inc.
CAG–57.
Docket No. CP94–388–000, Texas Gas Transmission Corporation
Docket No. CP94–390–000, Enron Louisiana Energy Company
CAG–58.
Docket No. RS92–23–026, Tennessee Gas Pipeline Company
Docket No. RS92–33–010, East Tennessee Natural Gas Company
CAG–59.
Docket No. CP87–39–002, Granite State Gas Transmission, Inc.
CAG–60.
Docket No. CP92–184–010, Texas Eastern Transmission Corporation
CAG–61.
Docket No. CP94–88–001, Great Lakes Gas Transmission Limited Partnership

Hydro Agenda

H–1. Project No. P–5797–002, B&C Energy, Inc.. Order on license application.

Electric Agenda

E–1.
Docket No. TX94–4–000, Tex-La Electric Cooperative, of Texas, Inc.
Docket No. ER94–1385–000, West Texas Utilities Company. Request for transmission service under section 211 of the Federal Power Act.

Miscellaneous Agenda

M–1.
Docket No. RM91–12–000, Alternative Dispute Resolution. Notice of Proposed Rulemaking.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Docket Nos. CP93–258–000, 001 and 003, Mojave Pipeline Company. Application for certificate authorizing major pipeline expansion.

Dated: November 2, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27700 Filed 11–3–94; 4:07 pm]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Thursday, November 10, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 10, 1994, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Private Radio—Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253). Summary: The Commission will consider petitions for reconsideration of rules established for the entrepreneurs' blocks in the broadband Personal Communications Service.

2—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—("Going-Forward" Issues) (MM Docket Nos. 92–266 and 93–215). Summary: The Commission will consider revised "going forward" rules governing rates for regulated cable services and related issues.

3—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution and Carriage (MM Docket No. 92–265). Summary: The Commission will consider petitions for reconsideration of the cable television program access rules other than issues raised in the National Rural Telecommunications Cooperative's (NRTC) petition relating to exclusive contracts with non-cable multichannel video programming (DBS) distributors.

4—Field Operations—Title: Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System (FO Docket Nos. 91–171 and 91–301). Summary: The Commission will consider replacing the Emergency Broadcast System with a new technical and operational structure.

5—Mass Media—Title: Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements. Summary: The Commission will consider action concerning broadcast station operator and transmitter control requirements.

6—Mass Media—Title: 4,295 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at 62 Transmitter Sites; 96 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations. Summary: The Commission will consider 4,560 reconsideration petitions regarding applications for new MDS stations.

7—Mass Media—Title: Amendment of Parts and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253) Summary: The Commission will consider alternatives for streamlining the procedures by which applications for new Multipoint Distribution Service are filed and processed.

8—Common Carrier—Title: Policies and Rules Concerning Letters of Agency for Changing Long Distance Carriers ("Slamming"). Summary: The Commission will consider proposing rules concerning letters of agency for changing long distance carriers.

Additional information concerning this meeting may be obtained from Audrey Spivack or Susan Lewis Sallet, Office of Public Affairs, telephone number (202) 418–0500.

Dated: November 3, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27745 Filed 11–4–94; 1:19 pm]

BILLING CODE 6712–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, November 15, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6481—Safety Study: Commuter Airline Safety.

6247A—Railroad Accident Report: Collision and Derailment of Burlington Northern Train 01–111–10 and Union Pacific Train NPSEZ-09 in Kelso, Washington, November 11, 1993.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: November 4, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–27735 Filed 11–4–94; 10:53 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 7, 14, 21, and 28, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 7

Thursday, November 10

2:30 p.m.

Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

(Contact: John Larkins, 301–415–7360)

4:00 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Amendments to 10 CFR Parts 30, 32, and 35: Preparation, Transfer of Commercial Distribution, and Use of Byproduct material for Medical Use (Tentative)

(Contact: Anthony Tse, 301–415–6233)

Week of November 14—Tentative

There are no meetings schedule for the Week of November 14.

Week of November 21—Tentative

There are no meetings schedule for the Week of November 21.

Week of November 28—Tentative

There are no meetings schedule for the Week of November 28.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. if there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. to verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 504–1963.

Dated: November 3, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94–27730 Filed 11–4–94; 10:52 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 7, 1994.

A closed meeting will be held on Wednesday, November 9, 1994, at 10:00 a.m. An open meeting will be held on Thursday, November 10, 1994, at 10:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(1) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items

listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 9, 1994, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Formal order of investigation.
Opinion.

The subject matter of the open meeting scheduled for Thursday, November 10, 1994 at 10:00 a.m., will be:

1. Consideration of proposed Rule 15c2–13 and proposed amendments to Rule 10b–10 under the Securities Exchange Act of 1934, which would require brokers and dealers to provide customers immediate written notification of certain additional information relevant to their securities transactions. For further information, please contact C. Dirk Peterson at (202) 942–0073.

2. Consideration of whether to adopt amendments to Rule 15c2–12 under the Securities Exchange Act of 1934 which require a broker, dealer, or municipal securities dealer underwriting municipal securities to reasonably determine that an issuer of municipal securities or an obligated person has agreed to make available annual financial information an event notices; and which impose requirements on brokers, dealers, and municipal securities dealers recommending the purchase or sale of municipal securities covered by the rule. For further information, please contact Janet W. Russell-Hunter at (202) 942–0073; or Amy Meltzer Starr at (202) 942–1875.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: November 3, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27744 Filed 11–4–94; 1:18 am]
BILLING CODE 8010–01–M

federal register

Tuesday
November 8, 1994

Part II

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Parts 9903, 9905

Cost Accounting Standards Board; Application of Cost Accounting Standards Board Regulations to Educational Institutions; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9903, 9905

Cost Accounting Standards Board; Application of Cost Accounting Standards Board Regulations to Educational Institutions

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Cost Accounting Standards Board (CASB) hereby amends the regulatory provisions contained in Chapter 99 of Title 48. The amendments being promulgated today as a final rule apply to educational institutions receiving a negotiated Federal contract or subcontract award, in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CASB regulations), and require that such educational institutions comply with certain specified CASB rules, regulations and Cost Accounting Standards (CAS).

EFFECTIVE DATE: This rule is effective on January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The CASB's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised CAS, complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a final rule.

This promulgation completes the four step process.

B. Background

Prior Promulgations: Based on information that some institutions of higher education were improperly allocating indirect costs to Federal research programs and charging unallowable costs to Federal awards (e.g., contracts, grants and cooperative agreements), the CASB published three Federal Register (FR) proposals requesting public comments from interested parties concerning the proposed application of the Board's rules, regulations and Standards to educational institutions. A Staff Discussion Paper was published on October 8, 1991 (56 FR 50737). After consideration of the public comments received in response to the Staff Discussion Paper, the CASB published an Advance Notice of Proposed Rulemaking (ANPRM) on June 2, 1992 (57 FR 23189). On December 21, 1992, after consideration of the public comments received in response to the ANPRM, the CASB published a Notice of Proposed Rulemaking (NPRM) (57 FR 60503) concerning proposed amendments to Chapter 99 of Title 48 that, when issued as a final rule, would require educational institutions to comply with certain specified CASB rules, regulations and Standards.

Public Comments: Seventy sets of public comments were received in response to the NPRM from educational institutions, Government agencies, public accounting firms, a professional accounting association, other associations, and an individual.

Many commenters opposed the CASB's proposal to independently promulgate CAS coverage for application to colleges and universities. The commenters' concerns centered primarily on the premise that the Board's proposal would result in a "second" set of accounting rules that may conflict with the accounting principles specified in Office of Management and Budget (OMB) Circular A–21, Cost Principles For Educational Institutions. Establishment of a "single" set of accounting requirements in Circular A–21 was recommended. In the promulgations referenced above, the Board stated that its proposed requirements are intended to be compatible with the basic requirements of Circular A–21. No conflicting provisions were specifically identified by the commenters. The Board, in its promulgations, repeatedly stated that it expected OMB to extend the CAS coverage established for contracts to grants and other forms of financial assistance by formal revision of Circular A–21.

On July 26, 1993, OMB, in the preamble comments to a **Federal Register** proposal making certain final revisions to Circular A–21 (58 FR 39997), stated that "Consistent with the Board's stated expectations, OMB plans to extend the CASB's regulations and Standards applicable to educational institutions to all awards (contracts and grants) made to institutions that are major recipients of Federal research funds."

Consistent with the CASB's stated expectations and independent statutory rulemaking authority, the CASB is promulgating this final rule in today's **Federal Register**. The Board has purposefully delayed the effective date of this final rule by 60 days so that OMB, by separate action, can amend Circular A–21 to incorporate the Board's requirements. Once promulgated, the Circular A–21 amendments incorporating CAS should mitigate the basis for the commenters' concerns regarding "two" sets of rules.

A number of commenters expressed opposition to the Board's proposal from administration and cost of implementation viewpoints, but such commenters generally did not take issue with the technical aspects of the proposed coverage. Some commenters endorsed the Board's proposal. Several commenters provided constructive editorial and technical comments which, in their opinion, would improve and clarify the Board's proposed regulatory coverage.

The commenters' overall concerns and suggestions are addressed in greater detail under Section E., Public Comments. The Board and the CASB staff express their appreciation for the constructive suggestions and criticisms provided by the commenters, particularly those offered to clarify and improve the proposed language in Parts 9903 and 9905, and the content of the proposed Disclosure Statement. Many of the commenters' suggested improvements have been incorporated into the final rule being promulgated today.

Benefits: After consideration of the public comments received, it is the Board's opinion that the application of the CAS provisions being promulgated today will improve the cost accounting practices followed by educational institutions when estimating, accumulating and reporting costs under Federal awards, and that the incremental costs of compliance with the Board's specific requirements will be minimal. Costs associated with the initial preparation and maintenance of a Disclosure Statement should be offset by reductions in the recurring administrative costs currently associated with the preparation of cost accounting data being submitted routinely to the cognizant Federal

agencies for informational support, evaluation and negotiation of the institutions' indirect cost rate proposals. Use of the Disclosure Statement being promulgated today should also reduce the potential for disagreements between the contracting parties regarding an institution's cost accounting practices.

The Board believes this final rule will promote uniformity and consistency in the educational institutions' cost accounting practices. The potential benefits accruing to the Government's audit, negotiation and general contract administration processes will be substantial and will greatly outweigh any added costs.

Proposed Amendments: A brief description of the proposed amendments follows:

Part 9903, Contract Coverage: In Subpart 9903.2, CAS Program Requirements, existing subparagraph 9903.201–1(b)(10), exempting certain contracts awarded to educational institutions from CAS, is deleted. Subsections 9903.201–1 and 9903.201–2 are amended to identify which Standards shall continue to be applied to contractors other than educational institutions, and a new paragraph (9903.201–2(c)) is added to establish the particular Standards and associated contractual provisions to be applied to educational institutions. Subsection 9903.201–3 is amended to conform the prescribed solicitation notice for use by educational institutions. Subsection 9903.201–4 is amended to establish a unique contract clause for inclusion in CAS-covered contracts awarded to educational institutions. Subsection 9903.201–6 is amended to reference the new contract clause's provision permitting equitable adjustments when a change in cost accounting practice is found to be desirable and not detrimental. Section 9903.201–7 is added to specify cognizant Federal agency responsibilities for administering CAS-covered contracts. Section 9903.202 is amended to establish Disclosure Statement filing requirements for educational institutions (including temporary transition period filing requirements), prescribe the disclosure form to be submitted by educational institutions, and add new provisions requiring the cognizant Federal agency to establish policies and procedures for promptly determining the adequacy of submitted Disclosure Statements. In Subpart 9903.3, CAS Rules and Regulations, Section 9903.301 is amended to incorporate cross-references to definitions for certain new and existing terms.

Part 9905, Cost Accounting Standards For Educational Institutions: A new Part 9905 is added to incorporate four new Standards applicable to educational institutions, i.e., one requiring consistency in estimating, accumulating and reporting costs (Section 9903.501), one requiring consistency in allocating costs (Section 9903.502), one requiring contractor identification of specific unallowable costs (Section 9903.505), and one requiring consistency in the selection and use of a cost accounting period (Section 9903.506).

Summary Description of Amended CAS Coverage: As amended, Part 9903 and Part 9905 apply to educational institutions. A prescribed CAS contract clause must be incorporated in any negotiated Federal contract or subcontract awarded, in excess of $500,000, to an educational institution. An institution receiving a CAS-covered award will be contractually required to (1) consistently follow its established cost accounting practices when estimating (proposed costs), accumulating, and reporting costs under that and any subsequent CAS-covered award(s), (2) consistently allocate costs incurred for the same purpose, (3) identify unallowable costs and exclude from its billings, claims and proposals costs that are expressly unallowable or mutually agreed to be unallowable, and (4) consistently use the same cost accounting period for purposes of estimating, accumulating and reporting costs. Institutions receiving CAS-covered contracts will also be required to formally disclose, in a prescribed Disclosure Statement, and consistently follow their disclosed cost accounting practices, when a business unit of an institution:

(a) receives a CAS-covered contract or subcontract of $25 million, or more,

(b) received more than $25 million of CAS-covered contracts and subcontracts in its preceding cost accounting period, of which at least one award exceeded $1 million, or

(c) receives a CAS-covered contract or subcontract in excess of $500,000 *and* is one of the major recipients of Federal funds that is listed in Exhibit A of OMB Circular A–21.

Transition period Disclosure Statement filing requirements and temporary agency waiver authority are provided so agencies can phase-in the basic disclosure requirements in an orderly manner.

The CAS contract clause further provides for equitable price and cost adjustments in the event an institution is required to or elects to change its established or disclosed cost accounting practices (including cost accounting practice changes mandated by future amendments, if any, to Circular A–21), fails to consistently follow its established or disclosed cost accounting practices, or fails to comply with applicable Standards.

C. Paperwork Reduction Act

The information collection aspects of this rule have been approved by the Office of Management and Budget, and assigned Control Number 0348–0055.

D. Executive Order 12866 and the Regulatory Flexibility Act

This rule affects educational institutions receiving negotiated Federal contracts or subcontracts in excess of $500,000. The economic impact on educational institutions resulting from this rule is expected to be minor. Therefore, the Board has determined that this is not a "major rule" under Executive Order 12866, and that a regulatory impact analysis is not required. Furthermore, this regulation will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this final rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This final rule is based upon the NPRM published in the **Federal Register** on December 21, 1992, 57 FR 60503, wherein public comments were invited. Seventy commenters responded. Their comments were considered. The Board's actions taken in response thereto are summarized in the paragraphs that follow:

OMB Circular A–21

Comment: Many educational institutions opposed the CASB proposal to independently promulgate regulations for application to colleges and universities. Instead, they recommended that the Board "adopt" the provisions contained in the OMB Circular A–21 which they stated is also being revised to resolve the same type of problems cited as the reason for applying the proposed CAS provisions to educational institutions. Such commenters stated:

The proposed Standards duplicate A–21 requirements.

Extra Standards are unnecessary, A–21 is adequate with planned changes, etc.

CAS will increase the potential for conflicts between the two regulations.

The Government has failed to demonstrate the need for two sets of regulations.

The Board should work with OMB to develop a mutually acceptable single A–21 rule.

Response: In the NPRM, the Board specifically responded to virtually identical concerns which were expressed by commenters in response to the ANPRM.

The Board strongly disagrees with the commenters' perceptions that the Board's proposal is duplicative of the accounting principles specified in Circular A–21 and therefore is unnecessary.

Circular A–21 does not require educational institutions to formally disclose the cost accounting practices they use to estimate, accumulate and report the costs of performing Federal awards. Information currently obtained by Federal officials concerning an institution's cost accounting practices is generally limited to data (1) indirectly reflected in an institution's individual cost proposals or reimbursement claims, (2) sampled, reviewed and reported on by auditors, and/or (3) provided in conjunction with the submission of the institution's indirect cost rate proposals to the extent specifically required by the Federal negotiator. Consequently, when such cost accounting information is obtained by Federal officials, it is acquired sporadically, in varying degrees of uniformity and thoroughness.

Circular A–21 does not contain the specific criteria and guidance provided in the four Standards under consideration. Proposed Standards 9905.501 and 9905.502 establish fundamental consistency requirements, define terms, detail techniques and provide illustrations for achieving compliance with the Standards' fundamental requirements. These two Standards constitute a significant expansion and clarification of the general consistency concepts specified in Circular A–21. Standard 9905.505 prescribes alternate methods that may be applied in meeting the fundamental requirement to identify and exclude costs that are not allowable under the terms of Federal awards. Standard 9905.506 requiring that a consistent cost accounting period be used, additionally specifies how an institution can comply with that requirement, including the use of specified transition periods in cases where a change in cost accounting periods is necessary or alternate methods where use of a twelve month period is not appropriate. Again, the specificity and detailed guidance contained in the four Standards is not contained in Circular A–21.

Accordingly, it is the Board's view that:

The commenters general objections appear to deal more with the form of regulatory coverage rather than the substance of the coverage.

Promulgation of the Board's proposal will provide for disclosure of an institution's cost accounting practices in a structured manner that is more efficient and effective than the current unspecified process.

Disclosure and application of the proposed Standards will facilitate and improve the administration of Federal payments to recipients of Federal funds and provide greater assurances that the educational institutions follow their cost accounting practices in a consistent manner.

The Board's statutory authority for promulgating cost accounting rules, regulations and Standards resides with the Board. Delegation of such authority to other Federal officials is not authorized under the statute.

The Board's proposed provisions augment, but do not duplicate, the requirements of Circular A–21. Thus, adoption of Circular A–21 requirements in lieu of the Board's proposal would be inappropriate.

Comment: Several commenters stated that CAS should be implemented after expected OMB Circular A–21 "accounting" changes go into effect. This would avoid the necessity for filing Disclosure Statement (DS) revisions and cost impact statements.

Response: The referenced accounting principle changes were incorporated in Circular A–21 on July 15, 1993. The Circular's amended provisions are to be "* * * implemented with the establishment of indirect cost rates for all fiscal years beginning on or after January 1, 1994." It is the Board's understanding that these amendments need not be implemented during any fiscal years where predetermined indirect cost rates have already been established. Thus, the date the Circular's provisions "go into effect" will vary from institution to institution. The CASB's provisions are designed to be compatible with existing and future amended A–21 accounting principles. Whenever an OMB Circular A–21 mandated accounting principle change requiring an institution to change its cost accounting practice(s) is actually implemented, only the page(s) in the DS pertaining to the changed practice(s) need be amended and filed prior to actual implementation of the change. In such cases, the institution, pursuant to provision (a)(4)(iv) of the contract clause at 9903.201–4(e), must also resolve with their cognizant Federal agency officials whether an equitable adjustment is or is not required under existing CAS-covered contracts. Guidance for effecting equitable price adjustments is contained in 9903.305, Materiality, and 9903.306, Interpretations.

Accordingly, it is not feasible, desirable or necessary for the Board to establish a concurrent effective date as suggested for implementation of this final rule.

Administrative Costs to Implement CAS

Comment: Many of the commenters stated that the CASB rules impose an administrative cost burden.

Response: The commenters various concerns that application of the Board's proposed CAS coverage will impose an administrative cost burden generally evolved into two basic questions:

1. What presently constitutes an adequate cost accounting system under the terms and conditions of existing Federal awards?
2. What are the additional costs imposed by CAS?

Educational institutions are required to maintain adequate records for the accumulation and identification of allowable costs under the existing regulatory requirements incorporated in their existing Federal awards. It is not altogether clear if the cited administrative cost concerns are solely attributable to the Board's proposal or a possible indication of a lack of compliance with the existing contractual requirements concerning the maintenance of adequate estimating and cost accounting systems. Educational institutions must presently administer their Federal awards and resolve any cost accounting issues raised by Federal officials in accordance with existing administrative processes. The administrative costs that were or are currently being incurred by some of the major universities to resolve the recent Federal challenges to proposed and claimed costs were not mentioned.

When several universities were recently subjected to increased Federal audit scrutiny, millions of dollars of claimed costs were questioned and recovered by Federal agencies. The basis for such Federal challenges were attributed to (1) differing interpretations regarding the propriety of the institutions' cost allocation processes and (2) the institutions' failure to identify and exclude unallowable costs from their proposals and cost-reimbursement claims. The CASB's proposal requires formal disclosure of the major institutions' cost accounting practices; and, provides Standards for attaining consistency and for identification and exclusion of unallowable costs. The additional costs imposed by CAS are the incremental costs required to complete and maintain Disclosure Statements. The CAS consistency and unallowable cost provisions are Standards for meeting existing contractual requirements. Thus, the Board views the administrative costs associated with the latter as part of the normal costs of compliance with the basic contractual requirements that are imposed under existing regulations.

Further, the Board believes the proposal will reduce the potential for after-the-fact disagreements over the educational institutions' cost allocation processes, establish a more structured process for resolving cost accounting issues and will, in the long run, benefit both the Government and the educational institutions.

The expressed concerns did not result in modification of the Board's proposed regulatory requirements. However, the content of the proposed CASB Form DS–2 was significantly reduced to minimize Disclosure Statement preparation costs, as discussed in Paragraph F.

Civilian Agencies are Not Staffed to Administer CAS

Comments: Several commenters stated that they would be adversely impacted because agencies are not staffed to administer Disclosure Statements (DSs) and routine changes in their accounting systems. The Department of Health and Human Services confirmed that it too was concerned about its abilities to immediately implement the proposed CAS requirements for all CAS-covered entities.

Response: In consideration of the expressed concerns, the Board concluded that delayed implementation of the DS submission requirements would benefit the contracting parties. Under the NPRM, educational institutions meeting specified criteria were required to submit a DS prior to receipt of a CAS-covered contract. It is not the Board's intent to preclude the award of a contract where an institution has not yet become familiar with the Board's new disclosure requirements or been provided a reasonable opportunity to disclose its cost accounting practices. Further, the Board views an orderly phased-in implementation period as preferable to the proposed requirement which could clearly strain cognizant Federal agency resources if concurrent receipt of a significant number of DSs occurred. Accordingly, the Board has delayed implementation of the basic requirement and established transition period requirements for the filing of new DSs, applicable exclusively to educational institutions, at 9903.202–1(f).

Under the cited transition period provisions, educational institutions are authorized to file completed DSs *after* receipt of a CAS-covered contract that is placed on or before December 31, 1995. Six month filing periods ending six, twelve, and eighteen months after receipt of such contracts were established to phase-in the basic disclosure requirement in order to minimize the impact on educational institutions and Federal agencies. The twenty largest recipients of Federal funds were expected to submit completed DSs first and are, therefore, subject to the six month after award filing requirement. The next largest group of Federal funds recipients are subject to the twelve month requirement, etc.

Implementation of the basic requirement that a completed DS be provided or be on file with the cognizant Federal agency prior to award applies to CAS-covered contracts placed on or after January 1, 1996. However, where the cognizant Federal agency and the educational institution have established a DS due date falling between January 1, 1996 and June 30, 1997 pursuant to 9903.202–1(f)(3) and (4), individual awarding agencies are provided authorization to waive the preaward filing requirement for contracts placed during that period when necessary to avoid any potential due date conflicts.

For those educational institutions required to disclose their cost accounting practices, the transition provisions are intended to permit the larger recipients of Federal funds to complete and file DSs on or before June 30, 1996 and the smaller recipients to complete and file DSs no later than June 30, 1997. Earlier compliance with the basic disclosure requirement is encouraged.

The Board has also established additional provisions at 9903.201–7 and 9903.202–6 requiring Federal agencies to establish appropriate policies and procedures to administer CAS and to determine the adequacy of submitted DSs in a timely manner.

Predetermined Indirect Cost Rates (PDICRs)

Background: Predetermined fixed rates or negotiated fixed rates are used by some agencies to reimburse educational institutions for indirect costs associated with their cost-reimbursement type contracts and grants. Generally, such PDICRs are negotiated in advance, and are applied to direct base costs incurred and billed in subsequent periods. PDICRs are final rates, i.e., the indirect costs so determined and paid under Federal awards are not subsequently adjusted to reflect the actual allowable indirect costs incurred during the subsequent periods of performance. At some locations where a civilian agency is the cognizant Federal agency, an institution's PDICR proposal may be based on actual costs *extrapolated* from the institution's fund accounting records that were maintained for a completed fiscal year, i.e., a prior base year (e.g., year 1). The base year's costs may be adjusted to reflect estimated base and pool costs for future fiscal years (e.g., PDICRs negotiated in year 2 may cover years 3, 4, etc.). Under the current Federal Acquisition Regulation (FAR), FAR 42.705–3(b) only permits the use of "predetermined final indirect cost rates" for contract awards when specified conditions are met. Predetermined rates covering more than a one year period are prohibited under FAR 42.705–3(b)(6).

Comment: The Department of Health and Human Services asked the Board to "* * * explicitly state that the standards do not preclude the use of * * *" PDICRs.

Response: The use of PDICRs is subject to agency procurement regulations. Where permitted by statute and implementing agency regulations, negotiated PDICRs can continue to be used *provided* that, in the completed base year and in subsequent cost accounting periods, (1) all costs incurred for the same purpose, in like circumstances, are consistently treated as either direct costs only or as indirect costs only and (2) the allocation base costs (e.g., Modified Total Direct Costs) and allowable indirect cost pool amounts are grouped, accumulated and allocated in a consistent manner. The base costs and pool costs used to calculate predetermined or negotiated fixed rates should be estimated by using the same cost accounting practices that were used to measure, assign, and allocate actual base costs and indirect pool costs for a completed fiscal year. If different cost accounting practices are used to estimate and accumulate base or pool costs of a future period, the change in cost accounting practice must be disclosed under the terms of CAS-covered contracts. The cost accounting practices used to determine estimated (predetermined) and actual indirect costs are subject to the Board's CAS and Disclosure Statement requirements.

The use of predetermined or negotiated fixed rates, for administrative convenience or for other reasons, should not be viewed as a CAS noncompliance issue, provided the institution maintains cost accounting records which clearly demonstrate that direct and indirect costs are determined in a consistent manner, when the institution estimates, accumulates and reports costs applicable to Federal awards (See 9905.501).

Comment: One university representative requested the Board to "* * * comment on the significance of

* * *" PDICRs and compliance with CAS. The commenter believes that CAS compliance is achieved if the PDICR is "* * * multiplied by the applicable direct cost base. Any further inquiry into actual indirect costs would be inconsistent with the premise of predetermined rates * * *".

Response: The Board does not agree with the commenter's perceptions. Under existing Federal contractual audit and record keeping requirements, an institution must maintain a complete set of accounting records, supported by source documents, that adequately reflect all costs incurred and claimed under their Federal awards. Such records must also be made available for audit pursuant to applicable Federal audit requirements. Under the CAS being promulgated today, an educational institution is required to maintain cost accounting records which reflect the consistent application of the institution's established cost accounting practices, including those used to classify a cost either as a direct or indirect cost, when estimating, accumulating and reporting costs during *each cost accounting period.* Memorandum or work sheet records are acceptable.

Based on this comment, the Board is concerned that some institutions may not be maintaining annual cost accounting records that adequately identify how their total direct and indirect costs are treated during each cost accounting period. Without such annual records, the institution's internal controls and the "audit trail" (from source documents to final cost accumulation points) would be obscured. Consequently, the institution's ability to demonstrate the consist application of its established cost accounting practices when estimating, accumulating and reporting direct and indirect costs may be irreparably impaired.

Educational institutions are advised that failure to maintain adequate cost accounting records *for each cost accounting period* may be viewed as a violation of their existing contractual record keeping requirements and/or result in a determination that the institution has failed to comply with an applicable CAS or to consistently follow its established cost accounting practices.

Negotiated Fixed Rates and Carry-Forward Provisions (NFR–CFPs)

Background: OMB Circular A–21 provides that where NFR–CFPs are used, the over- or under-recovery in a particular year may be included as an adjustment to the indirect cost recognized as allowable and allocable in a subsequent year.

Comment: An accounting association expressed concerns that use of NFR-CFPs may result in significantly inaccurate measurements of cost for a particular cost accounting period.

Response: To some, this overall adjustment process may raise valid cost assignment and allocation issues. However, the carry forward provision is viewed by the Board as essentially an administrative expedient. It is the Board's understanding that the carry-forward provision is generally used where the number of Federal awards is significant but the volume of Federal activity is relatively stable and predictable. Rather than adjust the individual amounts billed for a large number of awards, necessary adjustments are effected in an overall manner by offsetting different amounts otherwise considered allowable. Such offsets made in a subsequent period for adjustments attributable to a prior period represent, in essence, the implementation of an administrative policy on how to best effect adjustments for any over- or under-payments after the actual allowable costs are determined for a prior period.

Where agency procurement regulations permit the use of NFR-CFPs, the resulting cost adjustment process should not be viewed as a CAS noncompliance issue *per se.* Necessary adjustments may be applied under CAS-covered contracts if the cost accounting practices used to initially determine forecasted or actual indirect costs and rates (exclusive of any carry forward adjustments) for each year comply with the Board's rules, regulations, and Standards. In such cases, however, a distinctive two step procedure must be followed. First, the forecasted or actual indirect expense pool(s) used to initially determine the forecasted rates and the actual prior year rates must be determined exclusive of any carry forward adjustments. The cost accounting practices used to do so must meet applicable CAS requirements. Then, after the rates are so determined, the institution and cognizant Federal negotiator may, if permitted by agency regulations, effect appropriate adjustments to a forecasted year rate to compensate for any over- or under-estimated indirect cost payments made in a prior year.

Part 9903 CAS Applicability Provisions

Comment: A commenter asked if a negotiated contract would be considered CAS-covered, where a contract initially awarded for $325,000 to cover a three year performance period were increased to $625,000 and the performance period were extended to five years.

Response: The CAS applicability threshold is determined at the time the basic contract is awarded based on the total negotiated price for the entire scope of work contemplated, including all options. If only a three year contract was contemplated, the described contract action totaling $325,000 would not incorporate a CAS contract clause. However, if the Government had initially contemplated a five year contract performance period but available funds were obligated to only cover the first three years, CAS applicability would be determined based upon the negotiated contract price for the full five year period. That is, where a negotiated contract is incrementally funded, the individual amounts of funding provided in the basic award and subsequent funding modifications are not to be used individually in determining CAS applicability. Rather, the entire estimated contract cost, plus fee, if any (for the entire period of performance), is used to determine CAS applicability.

Comment: A commenter asked if an existing negotiated contract in excess of $500,000 that is not currently CAS-covered would become CAS-covered after promulgation of this final rule if a contract modification increases the contract price by $100,000.

Response: No. The existing non-CAS-covered contract would not become CAS-covered even if the modification was in excess of $500,000.

Comment: A commenter asked if a $200,000 subcontract awarded under a CAS-covered prime contract would be CAS-covered?

Response: No. Only negotiated subcontracts in excess of $500,000 will be required to be CAS-covered.

Comment: Several commenters expressed opposition to the proposed CAS applicability provision that requires full coverage when an institution receives a single CAS-covered award in excess of $500,000 and the institution is listed in Exhibit A of OMB Circular A–21.

Response: Exhibit A of the Circular lists the 99 educational institutions that receive the preponderant amount of Federal research funds under their contracts and grants. The listed institutions receive Federal funds ranging from more than $25 million annually to amounts in excess of $250 million annually. Unlike commercial organizations, however, many of these educational institutions do not receive large individual dollar value contracts that could be used as an effective applicability threshold, e.g., to trigger a

Disclosure Statement requirement. Rather, they receive a large number of small dollar value contract and grant awards. The Board believes it would be beneficial to the contracting parties if the larger recipients of Federal research funds formally disclosed their cost accounting practices. Accordingly, use of only a $25 million contract threshold to initiate the disclosure requirement being promulgated today was not considered sufficient to meet the Board's objective.

Comment: There is an inconsistency in the proposed threshold coverage: Coverage is set at "$500,000 or more" and at "in excess of $500,000."

Response: The NPRM proposed language has been revised to consistently cite "in excess of $500,000."

Comment: If educational institutions are to be covered by CAS, whereas only their FFRDCs were covered previously, all future CAS-covered contracts awarded to educational institutions should be subject to the same coverage. The proposal to retain modified and full coverage for such FFRDCs should be eliminated.

Response: FFRDCs are generally treated as an independent segment of an educational institution and have been subject to full or modified CAS coverage prescribed by the CASB and incorporated in Part 9903 and Part 9904 by the Board. That prescribed coverage for FFRDCs is not modified or revised by this final rule.

Part 9905 Cost Accounting Standards

Standard 9905.501

Comment: If an institution installs a new accounting system with a new chart of accounts during the performance of a contract and it cannot report actual costs consistent with the way the costs were estimated, does this constitute a violation of the Fundamental Requirement at 9905.501–40(b)?

Response: Yes. Changes made in an institution's general accounting systems used for financial management and reporting purposes that result in a change in the institution's cost accounting practices or noncompliance with a Standard are subject to paragraphs (a)(4) and (a)(5), respectively, of the contract clause at 9903.201–4(e).

Comment: A commenter suggested that the Board clarify that the providing of estimated cost data in greater detail than the institution's accounting system can handle should not constitute a violation of Standard 9905.501.

Response: The Board's proposal was predicated on Standard 9904.401. However, the Interpretation at 9904.401–61 that addressed to what degree the costs for estimated scrap and shrinkage costs in a manufacturing production oriented environment should be accounted for in a contractor's cost accounting records was not included in 9905.501. Scrap and shrinkage costs were not considered a material cost item under research contracts performed by educational institution. The Board believes that the record keeping concepts expressed in the referenced Interpretation apply equally to this commenter's concern and that such guidance would facilitate implementation of 9905.501. Accordingly, the portions of the referenced Interpretation concerning the amount of detail required in accumulating and reporting costs have been incorporated at 9905.501–50(c).

Standard 9905.502

Comment: One commenter expressed difficulty in understanding the concepts of Standard 9905.502 where the university engages in cost sharing, where projects have multiple sponsors particularly in light of the university's desire to accommodate the different requirements imposed by Federal and private supporters and the different fund accounting methods it uses to account for restricted and unrestricted funds.

Response: The statements provided by this commenter infer that, in a university "fund" accounting system, direct and indirect costs for a particular project cannot always be allocated to final cost objectives on a consistent basis. Thus, the proposed Standard requires revision. If that was the commenters intent, the Board does not agree.

One of the Board's primary objectives is to prescribe rules and regulations that will result in the consistent and equitable allocation of direct and indirect costs to CAS-covered contracts. The purpose of Standard 9905.502 is to require consistency in the institution's cost accounting practices followed for determining the direct and indirect costs to be allocated to all final cost objectives. The Standard requires that the institution's cost accounting practices consistently treat costs incurred for the same purpose, in like circumstances, as either a direct cost or an indirect cost, without regard to the source or type of funds (restricted or unrestricted) involved. While multi-sponsored projects and cost-sharing arrangements are not specifically addressed, this Standard requires that direct and indirect costs be allocated to all final cost objectives established for each project on a consistent basis in the institution's cost accounting system. A project's costs may be accumulated under one final cost objective and be identified with individual sponsors on a pro rata basis, and/or project costs may be accumulated and recorded in sub-accounts or individual cost accumulation points (final cost objectives) associated with each sponsor. This Standard does not prescribe criteria for determining what constitutes a project or the number of final cost objectives required to accumulate costs for a project.

Comment: Where a large major research contract involves the management of major subcontracts, complex procurements and equipment fabrications, award and administration costs of such activities may be directly attributable to the research project and are charged directly. Conversely, procurements under smaller projects that are relatively simple to administer, may be administered by the department's general business manager, who is included in Departmental Administration indirect cost pool. The Board should recognize that this is not a violation of the Standard.

Response: Where an institution can demonstrate different circumstances, Standard 9905.502 permits the use of different allocation methods. However, the described circumstances appear identical to the illustration of costs that are incurred for the same purpose, at 9905.502–60(a)(1), where the institution elects to charge travel costs, normally treated as an indirect cost, directly to a contract. That illustration provides that similar travel costs incurred under other contracts may no longer remain in the indirect expense pool. The described subcontract administration costs appear to be incurred for the same purpose, regardless of the subcontracts' size, nature or complexity. Double counting may occur if the costs of administering other subcontracts under the smaller projects are not removed from the Departmental Administration indirect cost pool and charged directly. Determinations on whether different circumstances are or are not involved must be made on a case-by-case basis.

Comment: In 9905.502–30(a)(4), it should be made clear that the term "final cost objective" is not intended to mean each individual contract.

Response: The term "final cost objective" as defined in the Standards, applies to individual cost objectives, e.g., individually sponsored projects (contracts, grants, etc.), co-sponsored projects, in-house projects, and similar cost objectives. Normally, costs

accumulated in a final cost objective are not allocated to other cost objectives.

Comment: A Federal agency recommended that, in 9905.502–60(a)(2), the proposed term "planning costs" be replaced with a more representative term such as "purchasing activity" which is a more significant cost item at universities.

Response: The illustration was appropriately revised.

Comment: A commenter suggested that certain prescribed OMB policies and procedures be illustrated as an acceptable practice in the Standard.

Response: The suggestion would result in the duplication and unnecessary proliferation of existing regulations. The commenter did not indicate if there was a potential conflict between CAS and OMB Circular A–21, accordingly the proposed Standard was not modified.

Standard 9905.505

Comment: A commenter from a major university stated that paragraph 9905.505–40(f) describes how to handle a cost overrun on a contract. However, it does not consider the way in which cost overruns must be handled in a fund accounting system. This paragraph should either be deleted or modified to recognize the requirement of a fund accounting contractor.

Response: The Board's Standards pertain to the complete set of cost accounting practices used by an institution to estimate, accumulate and report costs under negotiated Federal awards. Conceptually, the same cost accounting practices are applied to all activities of a segment performing CAS-covered contracts in order to ensure all costs are allocated on a consistent basis to all final cost objectives. The particular provision in question requires that an institution be able to identify the total costs incurred with respect to a particular contract or similar cost objective, regardless of available funding considerations. In cases of a contract cost overrun, the Standard does not prescribe how the cost overrun is to be treated in the educational institution's "fund" accounting system.

The commenter's statements remain a concern to the Board, as this issue was discussed in the preamble comments to the NPRM. The explanatory statements currently provided infer that cost overruns cannot be accumulated and reported in a university environment. Because all costs must be funded in order to be recorded in a fund accounting system, the commenter advised that the direct costs of an overrun contract must be transferred to other projects or to other indirect cost centers (e.g., from Research to Instruction). Within the set of cost accounting practices used for determining the costs of Federal awards, such transfers could result in the allocation of different indirect cost amounts to the same base costs and alter the amount of indirect costs allocated to other final cost objectives. If so, the described practices would not be in compliance with the consistency requirements being promulgated today. The commenting university is encouraged to review, and possibly modify, its cost accounting practices being followed under Federal awards to ensure that they will be in compliance with the Board's consistency requirements.

Comment: One commenter asked: After identifying an indirect cost that has been questioned by the auditor and sustained by the contracting officer, must the university also deduct it from subsequent proposals pending appeal?

Response: No. The type of costs under appeal must be identified in, but need not be excluded from, proposals and reimbursement claims. If, after the appeal is adjudicated, the Contracting Officer's final decision is not overturned and the costs remain unallowable, the Standard's identification and exclusion provisions would apply.

Comment: A commenter suggested that, in 9905.505–60(d), the phrase "interim bidding and billing rates" be replaced by a more commonly used term.

Response: The phrase was replaced by the generic term "indirect cost rates."

Standard 9905.506

Comment: Under paragraph 9905.506–50(a)(2), a commenter suggested adding the words "or cost group" after the words "indirect cost pool." By way of explanation, the commenter advised the only way one could handle a situation of an indirect cost function which exists for only part of a year is to set up a separate cost group *within* one of the A–21 specified indirect cost pools.

Response: This suggestion was partially adopted. The term "expense pool" was added instead of the suggested term.

The commenter's suggestion and rationale could be erroneously interpreted by some to mean that a separate pool and allocation base applicable to the partial period need not be established. This Standard requires the use of a full cost accounting period, e.g., normally the institution's fiscal year. An exception provision permits the use of a shorter period for the allocation of indirect costs that only exist during a portion of the cost accounting period. In such cases, 9905.506–50(a) requires the establishment of a separate allocation base, during the partial period, that is representative of the short term function. That provision also requires that the indirect costs associated with the unique short term function be accumulated in a separate indirect cost pool. The resultant allocation to final cost objectives of the short term period would generally be independent of the normal A–21 allocation process that is predicated on allocation bases and indirect cost pools applicable to all work performed during a full cost accounting period. The Board believes incorporation of the term "expense pool" will clarify that unique indirect costs that only exist during a portion of the cost accounting period may be accumulated in a separate pool and allocated to final cost objectives of that shorter period.

Comment: A commenter stated that, in the illustration at 9905.506–60(a), the proposed phrase "estimated amount of the Organized Research expense pool" was unclear and suggested use of the phrase "estimated amount of indirect costs allocated to Organized Research."

Response: The suggested change was adopted.

Disclosure Statement (DS)

Comment: One commenter recommended that the Board clarify that the different and special handling of direct vs. indirect costs of an FFRDC contract from all other CAS-covered contracts does not constitute a violation of Standard 9905.502.

Response: When the cost accounting practices of the FFRDC activity and other institutional activities differ, the FFRDC should be treated as a separate "segment" and file its own DS. Where costs of the institution are allocated to both FFRDC and non-FFRDC activities, the segments' DSs should appropriately detail how institution-wide costs are allocated to the segments. Each segment must then disclose its particular cost accounting practices.

Likewise, if two departments at a campus location follow different cost accounting practices, the institution must decide if the two departments should be treated as separate segments and file separate DSs for each or if the cost accounting practices of the two departments should be conformed.

Comment: A Federal agency and other commenters advised that the level of detailed cost accounting records maintained by educational institutions to accumulate costs may vary depending

upon the indirect cost category or functional activity involved.

Response: In determining the costs of performing Federal awards, an institution's cost accounting records must be able to first identify and accumulate the total costs of each indirect cost category to be allocated to all major functions and activities of the institution. The accounting records maintained for this purpose must be sufficiently detailed to enable the contracting parties to reasonably establish base costs and indirect pool costs, applicable to all functions and activities, in a consistent manner. However, decisions on the level of detailed accounting records to be maintained should be influenced by the materiality of the costs being allocated to Federal awards. Reasonable approximations of costs may be used when the costs are immaterial or the resultant allocations to intermediate and final cost objectives will not differ materially from the amounts that would be obtained if more precise and detailed records were maintained. The level of accounting detail considered necessary in the circumstances must, therefore, be determined on a case-by-case basis and remains a matter subject to review and approval by the cognizant Federal agency.

In light of the commenter's statements, Item 3.1.0. of the Disclosure Statement was expanded to require disclosure of how the costs of the individual indirect cost categories are identified and accumulated. Where the costs associated with a particular indirect cost category are not formally accumulated and recorded in the institution's formal accounting system, the cost accounting practices followed to identify such costs for allocation to the major functions and activities of the institution must be fully described on a continuation sheet.

F. Additional Revisions—Disclosure Statement (DS) Form CASB DS–2

By memorandum dated February 1, 1994, the Deputy Administrator, Office of Information and Regulatory Affairs (OIRA), advised the Board that some representatives from OMB and the Department of Health and Human Services (HHS) had recently informed OIRA that the Board's proposed DS Form CASB DS–2 could be improved.

The Board advised OIRA that in order to meet its primary objective, the promulgation of a useful DS Form, it would consider any additional OMB suggestions or Federal agency elaborations regarding their previously submitted responses to the Board's NPRM. Representatives from OMB's Office of Federal Financial Management, HHS and the Department of Defense proceeded to develop a list of suggested changes which, in their view, would further clarify the proposed disclosure requirements or curtail the amount of disclosure needed for certain cost elements that were not considered to be significant or problematic. The list was informally coordinated with the CASB's staff. A revised CASB Form DS–2 was then prepared by the CASB staff and submitted to the Board. Most of the suggested changes were adopted by the Board and are reflected in the CASB Form DS–2 being promulgated today.

Essentially, a number of DS items contained in the NPRM were deleted and/or restated to facilitate disclosure. Consequently, the Board believes the DS being promulgated today is more useful and cost effective than that proposed in the NPRM. To that end, the Board expresses its appreciation for the assistance provided by OMB and agency representatives.

On July 21, 1994, OMB promulgated a Notice in the **Federal Register** (59 FR 37276) for paperwork clearance purposes and copies of the revised Form CASB DS–2 were made available to interested parties. Based on the public comments received, the promulgated Form CASB DS–2 was further revised as follows:

Item 2.4.0 was revised to clarify that the term "direct personal service costs" may include applicable fringe benefits costs consistent with OMB Circular A–21 provisions.

Item 3.1.0 was revised to include the word "other" to clarify that costs from one indirect cost category may be allocated to "other" indirect cost categories.

In Part VI, the instructions were expanded to provide the reporting unit with the option of completing the form for any costs incurred by another organizational entity where it has access to the necessary data or of requesting that entity to complete the pertinent items.

The Federal Acquisition Streamlining Act of 1994, in Section 2191 titled "Travel Expenses of Government Contractors" repealed Section 24 of the Office of Federal Procurement Policy Act (41 U.S.C. 420). Since proposed item 2.7.1. was predicated on the repealed statutory provisions, it was deleted.

In the General Instructions to the Disclosure Statement, Instruction Number 8, was modified to permit incorporation of written cost accounting polices and procedures by specific reference or alternatively by incorporation as appendices. As promulgated today, Instruction 8 is intended to facilitate full disclosure and minimize Disclosure Statement preparation costs whenever an established cost accounting practice is adequately described in an institution's formal accounting system.

List of Subjects in 48 CFR Parts 9903, 9905

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 9903 continues to read as follows:

Authority: Public Law 100–679, 102 Stat. 4056, 41 U.S.C. 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.1—General

2. Section 9903.102 is amended by revising the last sentence of this paragraph to read as follows:

9903.102 OMB Approval Under the Paperwork Reduction Act.

* * * OMB has assigned Control Numbers 0348–0051 and 0348–0055 to the paperwork, recordkeeping and forms associated with this regulation.

Subpart 9903.2—CAS Program Requirements

3. Section 9903.201–1 is amended by revising paragraph (a) and removing and reserving paragraph (b)(10) to read as follows:

9903.201–1 CAS applicability.

(a) This subsection describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. (See 9904 or 9905, as applicable.) Negotiated contracts not exempt in accordance with 9903.201–1(b) shall be subject to CAS. A CAS-covered contract may be subject to full, modified or other types of CAS coverage. The rules for determining the applicable type of CAS coverage are in 9903.201–2.

(b) * * *

(7)–(10) [Reserved]

* * * * *

4. Section 9903.201–2 is amended by revising the first sentence in paragraph (a) and adding a new paragraph (c) to read as follows:

9903.201–2 Types of CAS coverage.

(a) *Full coverage.* Full coverage requires that the business unit comply with all of the CAS specified in Part 9904 that are in effect on the date of the contract award and with any CAS that

become applicable because of later award of a CAS-covered contract. * * *

* * * * *

(c) *Coverage for educational institutions*—(1) Regulatory requirements. Parts 9903 and 9905 apply to educational institutions except as otherwise provided in this paragraph (c) and at 9903.202–1(f).

(2) *Definitions.* (i) The following term is prominent in Parts 9903 and 9905. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (c)(2)(ii) of this subsection below requires otherwise.

Educational institution means a public or nonprofit institution of higher education, e.g., an accredited college or university, as defined in section 1201(a) of Public Law 89–329, November 8, 1965, Higher Education Act of 1965; (20 U.S.C. 1141(a)).

(ii) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to educational institutions:

Business unit means any segment of an educational institution, or an entire educational institution which is not divided into segments.

Segment means one of two or more divisions, campus locations, or other subdivisions of an educational institution that operate as independent organizational entities under the auspices of the parent educational institution and report directly to an intermediary group office or the governing central system office of the parent educational institution. Two schools of instruction operating under one division, campus location or other subdivision would not be separate segments unless they follow different cost accounting practices, for example, the School of Engineering should not be treated as a separate segment from the School of Humanities if they both are part of the same division's cost accounting system and are subject to the same cost accounting practices. The term includes Government-owned contractor-operated (GOCO) facilities, Federally Funded Research and Developments Centers (FFRDCs), and joint ventures and subsidiaries (domestic and foreign) in which the institution has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the institution has less than a majority of ownership, but over which it exercises control.

(3) *Applicable Standards.* Coverage for educational institutions requires that the business unit comply with all of the CAS specified in Part 9905 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. This coverage applies to business units that receive negotiated contracts in excess of $500,000, except for CAS-covered contracts awarded to FFRDCs operated by an educational institution.

(4) *FFRDCs.* Negotiated contracts awarded to an FFRDC operated by an educational institution are subject to the full or modified CAS coverage prescribed in paragraphs (a) and (b) of this subsection. CAS-covered FFRDC contracts shall be excluded from the institution's universe of contracts when determining CAS applicability and disclosure requirements for contracts other than those to be performed by the FFRDC.

(5) *Contract Clauses.* The contract clause at 9903.201–4(e) shall be incorporated in each negotiated contract and subcontract awarded to an educational institution when the negotiated contract or subcontract price exceeds $500,000. For CAS-covered contracts awarded to a FFRDC operated by an educational institution, however, the full or modified CAS contract clause specified at 9903.201–4 (a) or (c), as applicable, shall be incorporated.

(6) *Continuity in Fully CAS-Covered Contracts.* Where existing contracts awarded to an educational institution incorporate full CAS coverage, the contracting officer may continue to apply full CAS coverage, as prescribed at 9903.201–2(a), in future awards made to that educational institution.

* * * * *

5. Section 9903.201–3 is amended by redesignating the introductory heading as the heading of paragraph (a); redesignating the existing introductory text and paragraphs (a) through (d) as paragraph (a)(1) introductory text and paragraphs (a)(1) (i) through (iv) respectively; adding a new paragraph (a)(2); revising the heading of the solicitation notice; adding a new paragraph at the end of the introductory "Note;" amending Part I of the basic provision by revising paragraph (a), the first and second sentences in paragraph (b) and paragraphs (c)(1) and (c)(2); and adding a new Alternate I at the end of the basic provision to read as follows:

9903.201–3 Solicitation provisions.

(a) Cost Accounting Standards Notices and Certifications.

(1) * * *

(2) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall use the basic provision set forth below with its Alternate I, unless the contract is to be performed by an FFRDC (see 9903.201(c)(5)), or the provision at 9903.201(c)(6) applies.

Cost Accounting Standards Notices and Certification (Oct 1994)

Note: * * *

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS-coverage pursuant to 9903.201–2(c)(5) or 9903.201–2(c)(6).

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of $500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of the Cost Accounting Standards Board (48 CFR, Chapter 99), except for those contracts which are exempt as specified in 9903.201–1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR, Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. * * *

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity, as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant ACO or cognizant Federal agency official acting in that capacity and/or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement. The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

* * * * *

(End of basic provision)

Alternate I (OCT 1994) Insert the following subparagraph (5) at the end of Part I of the basic clause:

☐ (5) Certificate of Disclosure Statement Due Date by Educational Institution. If the offeror is an educational institution that, under the transition provisions of 9903.202–1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

☐ (a) A Disclosure Statement filing Due Date of _____ has been established with the cognizant Federal agency.

☐ (b) The Disclosure Statement will be submitted within the six month period ending _____ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official where Disclosure Statement is to be filed: _____

_____

(End of Alternate I)

6. Section 9903.201–4 is amended by revising the text of paragraphs (a)(1) and (a)(2) preceding the clause and by adding a new paragraph (e) including a new clause to read as follows:

9903.201–4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraphs (d) or (e) of this section is used.

(2) The clause below requires the contractor to comply with all CAS specified in Part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

* * * * *

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 9903.201–1), the contract is to be performed by an FFRDC (see 9903.201–2(c)(5)), or the provision at 9903.201–2(c)(6) applies.

(2) The clause below requires the educational institution to comply with all CAS specified in Part 9905, to disclose actual cost accounting practices as required by 9903.202–1(f), and to follow disclosed and established cost accounting practices consistently.

Cost Accounting Standards—Educational Institution (Oct 1994)

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 9903.202–1 through 9903.202–5 including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A–21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2

is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

7. Section 9903.201–6 is amended by revising paragraph (a) to read as follows:

9903.201–6 Findings.

(a) Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clause set forth in 9903.201–4(a) or 9903.201–4(e), the Contracting Officer shall make a finding that the change is desirable and is not detrimental to the interests of the Government.

* * * * *

8. A new section 9903.201–7 is added to read as follows:

9903.201–7 Cognizant Federal Agency Responsibilities.

(a) The requirements of Part 9903 shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of Part 9903 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts or more than one Federal agency are involved, agencies should discourage Contracting Officers from individually administering CAS on a contract-by-contract basis. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that changes in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts at each contractor business unit and the delegation of necessary contracting authority to agency individuals authorized to administer the terms and conditions of CAS-covered contracts, e.g., Administrative Contracting Officers (ACOs) or other agency officials authorized to perform in that capacity. Agencies are urged to coordinate on the development of such regulations.

9. Section 9903.202–1 is amended by adding a new paragraph (f) to read as follows:

9903.202–1 General Requirements.

* * * * *

(f) *Educational institutions—disclosure requirements.* (1) Educational institutions receiving contracts subject to the CAS specified in Part 9905 are subject to the requirements of 9903.202, except that completed Disclosure Statements are required in the following circumstances.

(2) *Basic requirement.* For CAS-covered contracts placed on or after January 1, 1996, completed Disclosure Statements are required as follows:

(i) Any business unit of an educational institution that is selected to receive a CAS-covered contract or subcontract in excess of $500,000 and is part of a college or university location listed in Exhibit A of Office of Management and Budget (OMB) Circular A–21 shall submit a Disclosure Statement before award. A Disclosure Statement is not required, however, if the listed entity can demonstrate that the net amount of Federal contract and financial assistance awards received during its immediately preceding cost accounting period was less than $25 million.

(ii) Any business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more shall submit a Disclosure Statement before award.

(iii) Any educational institution which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $25 million or more in its most recent cost accounting period, of which, at least one award exceeded $1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the institution is not required to file until the end of 90 days.

(3) *Transition period requirement.* For CAS-covered contracts placed on or before December 31, 1995, completed Disclosure Statements are required as follows:

(i) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of the first 20 college or university locations (i.e., numbers 1 through 20) listed in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted within six months after the date of contract award.

(ii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of a college or university location that is listed as one of the institutions numbered 21 through 50, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending twelve months after the date of contract award.

(iii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of a college or university location that is listed as one of the institutions numbered 51 through 99, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending eighteen months after the date of contract award.

(iv) For any other business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more, a Disclosure Statement shall be submitted within six months after the date of contract award.

(4) *Transition period due dates.* The educational institution and cognizant Federal agency should establish a specific due date within the periods prescribed in 9903.202–1(f)(3) when a Disclosure Statement is required under a CAS-covered contract placed on or before December 31, 1995.

(5) *Transition period waiver authority.* For a CAS-covered contract to be awarded during the period January 1, 1996 through June 30, 1997, the awarding agency may waive the preaward Disclosure Statement submission requirement specified in 9903.202–1(f)(2) when a due date for the submission of a Disclosure Statement has previously been established by the cognizant Federal agency and the educational institution under the provisions of 9903.202–1(f) (3) and (4). **CAUTION:** This waiver authority is not available unless the cognizant Federal agency and the educational institution have established a disclosure statement due date pursuant to a written agreement executed prior to January 1, 1996, and award is made prior to the established disclosure statement due date.

10. Section 9903.202–5 is revised to read as follows:

9903.202–5 Filing Disclosure Statements.

(a) Disclosure must be on Form Number CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant Federal agency (cognizant ACO or cognizant Federal agency official authorized to act in that capacity) or from the looseleaf version of the Federal Acquisition Regulation. When requested in advance by a contractor, the cognizant Federal agency may authorize contractor disclosure based on computer generated reproductions of the applicable Disclosure Statement Form.

(b) Offerors are required to file Disclosure Statements as follows:

(1) Original and one copy with the cognizant ACO or cognizant Federal agency official acting in that capacity, as applicable; and

(2) One copy with the cognizant Federal auditor.

(c) Amendments and revisions shall be submitted to the ACO or agency official acting in that capacity, as applicable, and the Federal auditor of the currently cognizant Federal agency.

11. Section 9903.202–6 is added to read as follows:

9903.202–6 Adequacy of Disclosure Statement.

Federal agencies shall prescribe regulations and establish internal procedures by which each will promptly determine on behalf of the Government, when serving as the cognizant Federal agency for a particular contractor location, that a Disclosure Statement has adequately disclosed the practices required to be disclosed by the Cost Accounting Standards Board's rules, regulations and Standards. The determination of adequacy shall be distributed to all affected agencies. Agencies are urged to coordinate on the development of such regulations.

12. Section 9903.202–10 is added to read as follows:

9903.202–10 Illustration of Disclosure Statement Form, CASB DS–2.

The data which are required to be disclosed by educational institutions are set forth in detail in the Disclosure Statement Form, CASB DS–2, which is illustrated below:

BILLING CODE 3110–01–P

FORM APPROVED OMB NUMBER
0348-0055

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	INDEX

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	GENERAL INSTRUCTIONS

1. This Disclosure Statement has been designed to meet the requirements of Public Law 100-679, and persons completing it are to describe the educational institution and its cost accounting practices. For complete regulations, instructions and timing requirements concerning submission of the Disclosure Statement, refer to Section 9903.202 of Chapter 99 of Title 48 CFR (48 CFR 9903).

2. Part I of the Statement provides general information concerning each reporting unit (e.g., segments, business units, and central system or group (intermediate administration) offices). Parts II through VI pertain to the types of costs generally incurred by the segment or business unit directly performing under Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). Part VII pertains to the types of costs that are generally incurred by a central or group office and are allocated to one or more segments performing under Federally sponsored agreements.

3. Each segment or business unit required to disclose its cost accounting practices should complete the Cover Sheet, the Certification, and Parts I through VI.

4. Each central or group office required to disclose its cost accounting practices for measuring, assigning and allocating its costs to segments performing under Federally sponsored agreements should complete the Cover Sheet, the Certification, Part I and Part VII of the Disclosure Statement. Where a central or group office incurs the types of cost covered by Parts IV, V and VI, and the cost amounts allocated to segments performing under Federally sponsored agreements are material, such office(s) should complete Parts IV, V, or VI for such material elements of cost. While a central or group office may have more than one reporting unit submitting Disclosure Statements, only one Statement needs to be submitted to cover the central or group office operations.

5. The Statement must be signed by an authorized signatory of the reporting unit.

6. The Disclosure Statement should be answered by marking the appropriate line or inserting the applicable letter code which describes the segment's (reporting unit's) cost accounting practices.

7. A number of questions in this Statement may need narrative answers requiring more space than is provided. In such instances, the reporting unit should use the attached continuation sheet provided. The continuation sheet may be reproduced locally as needed. The number of the question involved should be indicated and the same coding required to answer the questions in the Statement should be used in presenting the answer on the continuation sheet. Continuation sheets should be inserted at the end of the pertinent Part of the Statement. On each continuation sheet, the reporting unit should enter the next sequential page number for that Part and, on the last continuation sheet used, the words "End of Part" should be inserted after the last entry.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	GENERAL INSTRUCTIONS

8. Where the cost accounting practice being disclosed is clearly set forth in the institution's existing written accounting policies and procedures, such documents may be cited on a continuation sheet and incorporated by refsrence. In such cases, the reporting unit should provide the date of issuance and effective date for each accounting policy and/or procedures document cited. Alternatively, copies of the relevant parts of such documents may be attached as appendices to the pertinent Disclosure Statement Part. Such continuation sheets and appendices should be labeled and cross-referenced with the applicable Disclosure Statement item number. Any supplementary comments needed to fully describe the cost accounting practice being disclosed should also be provided.

9. Disclosure Statements must be amended when disclosed practices are changed to comply with a new CAS or when practices are changed with or without agreement of the Government (Also see 48 CFR 9903.202-3).

10. Amendments shall be submitted to the same offices to which submission would have to be made were an original Disclosure Statement being filed.

11. Each amendment should be accompanied by an amended cover sheet (indicating revision number and effective date of the change) and a signed certification. For all resubmissions, on each page, insert "Revision Number ____" and "Effective Date _____" in the Item Description block; and, insert "Revised" under each Item Number amended. Resubmitted Disclosure Statements must be accompanied by similar notations identifying the items which have been changed.

ATTACHMENT - Blank Continuation Sheet

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	CONTINUATION SHEET
	NAME OF REPORTING UNIT

Item No.	Item Description

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	COVER SHEET AND CERTIFICATION

0.1 Educational Institution

(a) Name

(b) Street Address

(c) City, State and ZIP Code

(d) Division or Campus of (if applicable)

0.2 Reporting Unit is: (Mark one.)

A. ____ Independently Administered Public Institution
B. ____ Independently Administered Nonprofit Institution
C. ____ Administered as Part of a Public System
D. ____ Administered as Part of a Nonprofit System
E. ____ Other (Specify) _____

0.3 Official to Contact Concerning this Statement:

(a) Name and Title

(b) Phone Number (include area code and extension)

0.4 Statement Type and Effective Date:

A. (Mark type of submission. If a revision, enter number)

(a) ____ Original Statement
(b) ____ Amended Statement; Revision No. _____

B. Effective Date of this Statement: (Specify) _____

0.5 Statement Submitted To (Provide office name, location and telephone number, include area code and extension):

A. Cognizant Federal Agency: _____

B. Cognizant Federal Auditor: _____

FORM CASB DS-2 (REV 10/94) C-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	COVER SHEET AND CERTIFICATION

CERTIFICATION

I certify that to the best of my knowledge and belief this Statement, as amended in the case of a Revision, is the complete and accurate disclosure as of the date of certification shown below by the above-named organization of its cost accounting practices, as required by the Disclosure Regulations (48 CFR 9903.202) of the Cost Accounting Standards Board under 41 U.S.C. § 422.

Date of Certification: _____

_____
(Signature)

_____
(Print or Type Name)

_____
(Title)

THE PENALTY FOR MAKING A FALSE STATEMENT IN THIS DISCLOSURE IS PRESCRIBED IN 18 U.S.C. § 1001

FORM CASB DS-2 (REV 10/94) C-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item Description
	Part I
1.1.0	Description of Your Cost Accounting System for recording expenses charged to Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Accrual B. ____ Modified Accrual Basis 1/ C. ____ Cash Basis Y. ____ Other 1/
1.2.0	Integration of Cost Accounting with Financial Accounting. The cost accounting system is: (Mark one. If B or C is marked, describe on a continuation sheet the costs which are accumulated on memorandum records.) A. ____ Integrated with financial accounting records (Subsidiary cost accounts are all controlled by general ledger control accounts.) B. ____ Not integrated with financial accounting records (Cost data are accumulated on memorandum records.) C. ____ Combination of A and B
1.3.0	Unallowable Costs. Costs that are not reimbursable as allowable costs under the terms and conditions of Federally sponsored agreements are: (Mark one) A. ____ Specifically identified and recorded separately in the formal financial accounting records. 1/ B. ____ Identified in separately maintained accounting records or workpapers. 1/ C. ____ Identifiable through use of less formal accounting techniques that permit audit verification. 1/ D. ____ Combination of A, B or C 1/ E. ____ Determinable by other means. 1/
	1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) I-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item Description
1.3.1	Treatment of Unallowable Costs. (Explain on a continuation sheet how unallowable costs and directly associated costs are treated in each allocation base and indirect expense pool, e.g., when allocating costs to a major function or activity; when determining indirect cost rates; or, when a central office or group office allocates costs to a segment.)
1.4.0	Cost Accounting Period: _____ (Specify the twelve month period used for the accumulation and reporting of costs under Federally sponsored agreements, e.g., 7/1 to 6/30. If the cost accounting period is other than the institution's fiscal year used for financial accounting and reporting purposes, explain circumstances on a continuation sheet.)
1.5.0	State Laws or Regulations. Identify on a continuation sheet any State laws or regulations which influence the institution's cost accounting practices, e.g., State administered pension plans, and any applicable statutory limitations or special agreements on allowance of costs.
	1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) I-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part II Institutions should disclose what costs are, or will be, charged directly to Federally sponsored agreements or similar cost objectives as Direct Costs. It is expected that the disclosed cost accounting practices (as defined at 48 CFR 9903.302-1) for classifying costs either as direct costs or indirect costs will be consistently applied to all costs incurred by the reporting unit.
2.1.0	Criteria for Determining How Costs are Charged to Federally Sponsored Agreements or Similar Cost Objectives. (For all major categories of cost under each major function or activity such, as instruction, organized research, other sponsored activities and other institutional activities, describe on a continuation sheet, your criteria for determining when costs incurred for the same purpose, in like circumstances, are treated either as direct costs only or as indirect costs only with respect to final cost objectives. Particular emphasis should be placed on items of cost that may be treated as either direct or indirect costs (e.g., Supplies, Materials, Salaries and Wages, Fringe Benefits, etc.) depending upon the purpose of the activity involved. Separate explanations on the criteria governing each direct cost category identified in this Part II are required. Also, list and explain if there are any deviations from the specified criteria.)
2.2.0	Description of Direct Materials. All materials and supplies directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the principal classes of materials which are charged as direct materials and supplies.)
2.3.0	Method of Charging Direct Materials and Supplies. (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)
2.3.1	Direct Purchases for Projects are Charged to Projects at: A. ____ Actual Invoiced Costs B. ____ Actual Invoiced Costs Net of Discounts Taken Y. ____ Other(s) 1/ Z. ____ Not Applicable
2.3.2	Inventory Requisitions from Central or Common, Institution-owned Inventory. (Identify the inventory valuation method used to charge projects): A. ____ First In, First Out B. ____ Last In, First Out C. ____ Average Costs 1/ D. ____ Predetermined Costs 1/ Y. ____ Other(s) 1/ Z. ____ Not Applicable 1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.4.0	Description of Direct Personal Services. All personal services directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the personal services compensation costs, including applicable fringe benefits costs, if any, within each major institutional function or activity that are charged as direct personal services.)
2.5.0	Method of Charging Direct Salaries and Wages. (Mark the appropriate line(s) for each Direct Personal Services Category to identify the method(s) used to charge direct salary and wage costs to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, fully describe on a continuation sheet, the applicable methods used.)

	Direct Personal Services Category			
	Faculty (1)	Staff (2)	Students (3)	Other 1/ (4)
A. Payroll Distribution Method (Individual time card/actual hours and rates)	____	____	____	____
B. Plan - Confirmation (Budgeted, planned or assigned work activity, updated to reflect significant changes)	____	____	____	____
C. After-the-fact Activity Records (Percentage Distribution of employee activity)	____	____	____	____
D. Multiple Confirmation Records (Employee Reports prepared each academic term, to account for employee's activities, direct and indirect charges are certified seperately.)	____	____	____	____
Y. Other(s) 1/	____	____	____	____

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.5.1	Salary and Wage Cost Distribution Systems. Within each major function or activity, are the methods marked in Item 2.5.0 used by all employees compensated by the reporting unit? (If "NO", describe on a continuation sheet, the types of employees not included and describe the methods used to identify and distribute their salary and wage costs to direct and indirect cost objectives.) ____ Yes ____ No
2.5.2	Salary and Wage Cost Accumulation System. (Within each major function or activity, describe, on a continuation sheet, the specific accounting records or memorandum records used to accumulate and record the share of the total salary and wage costs attributable to each employee's direct (Federally sponsored projects, non-sponsored projects or similar cost objectives) and indirect activities. Indicate how the salary and wage cost distributions are reconciled with the payroll data recorded in the institution's financial accounting records.)
2.6.0	Description of Direct Fringe Benefits Costs. All fringe benefits that are attributable to direct salaries and wages and are charged directly to Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet all of the different types of fringe benefits which are classified and charged as direct costs, e.g., actual or accrued costs of vacation, holidays, sick leave, sabbatical leave, premium pay, social security, pension plans, post-retirement benefits other than pensions, health insurance, training, tuition, tuition remission, etc.)
2.6.1	Method of Charging Direct Fringe Benefits. (Describe on a continuation sheet, how each type of fringe benefit cost identified in Item 2.6.0. is measured, assigned and allocated (for definitions, See 9903.302-1); first, to the major functions (e.g., instruction, research); and, then to individual projects or direct cost objectives within each function.)
2.7.0	Description of Other Direct Costs. All other items of cost directly identified with Federally sponsored agreements or similar cost objectives. (List on a continuation sheet the principal classes of other costs which are charged directly, e.g., travel, consultants, services, subgrants, subcontracts, malpractice insurance, etc.)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.8.0	Cost Transfers. When Federally sponsored agreements or similar cost objectives are credited for cost transfers to other projects, grants or contracts, is the credit amount for direct personal services, materials, other direct charges and applicable indirect costs always based on the same amount(s) or rate(s) (e.g., direct labor rate, indirect costs) originally used to charge or allocate costs to the project (Consider transactions where the original charge and the credit occur in different cost accounting periods). (Mark one, if "No", explain on a continuation sheet how the credit differs from original charge.) ____ Yes ____ No
2.9.0	Interorganizational Transfers. This item is directed only to those materials, supplies, and services which are, or will be transferred to you from other segments of the educational institution. (Mark the appropriate line(s) in each column to indicate the basis used by you as transferee to charge the cost or price of interorganizational transfers of materials, supplies, and services to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, explain on a continuation sheet.)

	Materials (1)	Supplies (2)	Services (3)
A. At full cost excluding indirect costs attributable to group or central office expenses.	____	____	____
B. At full cost including indirect costs attributable to group or central office expenses.	____	____	____
C. At established catalog or market price or prices based on adequate competition.	____	____	____
Y. Other(s) 1/	____	____	____
Z. Interorganizational transfers are not applicable	____	____	____

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part III Institutions should disclose how the segment's total indirect costs are identified and accumulated in specific indirect cost categories and allocated to applicable indirect cost pools and service centers within each major function or activity, how service center costs are accumulated and "billed" to users, and the specific indirect cost pools and allocation bases used to calculate the indirect cost rates that are used to allocate accumulated indirect costs to Federally sponsored agreements or similar final cost objectives. A continuation sheet should be used wherever additional space is required or when a response requires further explanation to ensure clarity and understanding. The following Allocation Base Codes are provided for use in connection with Items 3.1.0 and 3.3.0. A. Direct Charge or Allocation B. Total Expenditures C. Modified Total Cost Basis D. Modified Total Direct Cost Basis E. Salaries and Wages F. Salaries, Wages and Fringe Benefits G. Number of Employees (head count) H. Number of Employees (full-time equivalent basis) I. Number of Students (head count) J. Number of Students (full-time equivalent basis) K. Student Hours -- classroom and work performed L. Square Footage M. Usage N. Unit of Product O. Total Production P. More than one base (Separate Cost Groupings) 1/ Y. Other(s) 1/ Z. Category or Pool not applicable 1/ List on a continuation sheet, the category and subgrouping(s) of expense involved and the allocation base(s) used.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
3.1.0	Indirect Cost Categories - Accumulation and Allocation. This item is directed at the identification, accumulation and allocation of all indirect costs of the institution. (Under the column heading, "Accumulation Method," insert "Yes" or "No" to indicate if the cost elements included in each indirect cost category are identified, recorded and accumulated in the institution's formal accounting system. If "No," describe on a continuation sheet, how the cost elements included in the indirect cost category are identified and accumulated. Under the column heading "Allocation Base," enter one of the allocation base codes A through P, Y, or Z, to indicate the basis used for allocating the accumulated costs of each indirect cost category to other applicable indirect cost categories, indirect cost pools, other institutional activities, specialized service facilities and other service centers. Under the column heading "Allocation Sequence," insert 1, 2, or 3 next to each of the first three indirect cost categories to indicate the sequence of the allocation process. If cross-allocation techniques are used, insert "CA." If an indirect cost category listed in this section is not used, insert "NA.")

Indirect Cost Category	Accumulation Method	Allocation Base Code	Allocation Sequence
(a) Depreciation/Use Allowances/Interest			___
Building	___	___	
Equipment	___	___	
Capital Improvements to Land 1/	___	___	
Interest 1/	___	___	
(b) Operation and Maintenance	___	___	___
(c) General Administration and General Expense	___	___	___
(d) Departmental Administration	___	___	
(e) Sponsored Projects Administration	___	___	
(f) Library	___	___	
(g) Student Administration and Services	___	___	
(h) Other 1/	___	___	

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description

3.2.0 Service Centers. Service centers are departments or functional units which perform specific technical or administrative services primarily for the benefit of other units within a reporting unit. Service Centers include "recharge centers" and the "specialized service facilities" defined in Section J of Circular A-21. (The codes identified below should be inserted on the appropriate line for each service center listed. The column numbers correspond to the paragraphs listed below that provide the codes. Explain on a Continuation Sheet if any of the services are charged to users on a basis other than usage of the services. Enter "Z" in Column 1, if not applicable.)

		(1)	(2)	(3)	(4)	(5)	(6)
(a)	Scientific Computer Operations	—	—	—	—	—	—
(b)	Business Data Processing	—	—	—	—	—	—
(c)	Animal Care Facilities	—	—	—	—	—	—
(d)	Other Service Centers with Annual Operating Budgets exceeding $1,000,000 or that generate significant charges to Federally sponsored agreements either as a direct or indirect cost. (Specify below; use a Continuation Sheet, if necessary)						
	_____	—	—	—	—	—	—
	_____	—	—	—	—	—	—

(1) Category Code: Use code "A" if the service center costs are billed only as direct costs of final cost objectives; code "B" if billed only to indirect cost categories or indirect cost pools; code "C" if billed to both direct and indirect cost objectives.

(2) Burden Code: Code "A" – center receives an allocation of all applicable indirect costs; Code "B" – partial allocation of indirect costs; Code "C" – no allocation of indirect costs.

(3) Billing Rate Code: Code "A" – billing rates are based on historical costs; Code "B" – rates are based on projected costs; Code "C" – rates are based on a combination of historical and projected costs; Code "D" – billings are based on the actual costs of the billing period; Code "Y" – other (explain on a Continuation Sheet).

(4) User Charges Code: Code "A" – all users are charged at the same billing rates; Code "B" – some users are charged at different rates than other users (explain on a Continuation Sheet).

(5) Actual Costs vs. Revenues Code: Code "A" – billings (revenues) are compared to actual costs (expenditures) at least annually; Code "B" – billings are compared to actual costs less frequently than annually.

(6) Variance Code: Code "A" – Annual variances between billed and actual costs are prorated to users (as credits or charges); Code "B" – variances are carried forward as adjustments to billing rate of future periods; Code "C" – annual variances are charged or credited to indirect costs; Code "Y" – other (explain on a Continuation Sheet).

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description

3.3.0 Indirect Cost Pools and Allocation Bases

(Identify all of the indirect cost pools established for the accumulation of indirect costs, excluding service centers, and the allocation bases used to distribute accumulated indirect costs to Federally sponsored agreements or similar cost objectives within each major function or activity. For all applicable indirect cost pools, enter the applicable Allocation Base Code A through P, Y, or Z, to indicate the basis used for allocating accumulated pool costs to Federally sponsored agreements or similar cost objectives.)

Indirect Cost Pools	Allocation Base Code
A. Instruction	
___ On-Campus	_____
___ Off-Campus	_____
___ Other 1/	_____
B. Organized Research	
___ On-Campus	_____
___ Off-Campus	_____
___ Other 1/	_____
C. Other Sponsored Activities	
___ On-Campus	_____
___ Off-Campus	_____
___ Other 1/	_____
D. Other Institutional Activities 1/	_____

3.4.0 Composition of Indirect Cost Pools. (For each pool identified under items 3.1.0 and 3.2.0, describe on a continuation sheet the major organizational components, subgroupings of expenses, and elements of cost included.)

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
3.5.0	Composition of Allocation Bases. (For each allocation base code used in items 3.1.0 and 3.3.0, describe on a continuation sheet the makeup of the base. For example, if a modified total direct cost base is used, specify which of the elements of direct cost identified in Part II, Direct Costs, that are included, e.g., materials, salaries and wages, fringe benefits, travel costs, and excluded, e.g., subcontract costs over first $25,000. Where applicable, explain if service centers are included or excluded. Specify the benefitting functions and activities included. If any cost objectives are excluded from the allocation base, such cost objectives and the alternate allocation method used should be identified. If an indirect cost allocation is based on Cost Analysis Studies, identify the study, and fully describe the study methods and techniques applied, the composition of the specific allocation base used, and the frequency of each recurring study .
3.6.0	Allocation of Indirect Costs to Programs That Pay Less Than Full Indirect Costs. Are appropriate direct costs of all programs and activities included in the indirect cost allocation bases, regardless of whether allocable indirect costs are fully reimbursed by the sponsoring organizations? A. ____ Yes B. ____ No 1/

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-5

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART IV- DEPRECIATION AND USE ALLOWANCES NAME OF REPORTING UNIT

Item No. | Item Description

Part IV

4.1.0 Depreciation Charged to Federally Sponsored Agreements or Similar Cost Objectives. (For each asset category listed below, enter a code from A through C in Column (1) describing the method of depreciation; a code from A through D in Column (2) describing the basis for determining useful life; a code from A through C in Column (3) describing how depreciation methods or use allowances are applied to property units; and Code A or B in Column (4) indicating whether or not the estimated residual value is deducted from the total cost of depreciable assets. Enter Code Y in each column of an asset category where another or more than one method applies. Enter Code Z in Column (1) only, if an asset category is not applicable.)

Asset Category	Depreciation Method (1)	Useful Life (2)	Property Unit (3)	Residual Value (4)
(a) Land Improvements	____	____	____	____
(b) Buildings	____	____	____	____
(c) Building Improvements	____	____	____	____
(d) Leasehold Improvements	____	____	____	____
(e) Equipment	____	____	____	____
(f) Furniture and Fixtures	____	____	____	____
(g) Automobiles and Trucks	____	____	____	____
(h) Tools	____	____	____	____
(i) Enter Code Y on this line if other asset catgories are used and enumerate on a continuation sheet each such asset category and the applicable codes. (Otherwise enter Code Z.)	____	____	____	____

Column (1)–Depreciation Method Code

A. Straight Line
B. Expensed at Acquisition
C. Use Allowance
Y. Other or more than one method 1/

Column (2)–Useful Life Code

A. Replacement Experience
B. Term of Lease
C. Estimated service life
D. As prescribed for use allowance by Office of Management and Budget Circular No. A-21
Y. Other or more than one method 1/

Column (3)–Property Unit Code

A. Individual units are accounted for separately
B. Applied to groups of assets with similar service lives
C. Applied to groups of assets with varying service lives
Y. Other or more than one method 1/

Column (4)–Residual Value Code

A. Residual value is deducted
B. Residual value is not deducted
Y. Other or more than one method 1/

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) IV-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART IV- DEPRECIATION AND USE ALLOWANCES NAME OF REPORTING UNIT

Item No.	Item Description
4.1.1	Asset Valuations and Useful Lives. Are the asset valuations and useful lives used in your indirect cost proposal consistent with those used in the institution's financial statements? (Mark one.) A. ____ Yes B. ____ No 1/
4.2.0	Fully Depreciated Assets. Is a usage charge for fully depreciated assets charged to Federally sponsored agreements or similar cost objectives? (Mark one. If yes, describe the basis for the charge on a continuation sheet.) A. ____ Yes B. ____ No
4.3.0	Treatment of Gains and Losses on Disposition of Depreciable Property. Gains and losses are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Excluded from determination of sponsored agreement costs B. ____ Credited or charged currently to the same pools to which the depreciation of the assets was originally charged C. ____ Taken into consideration in the depreciation cost basis of the new items, where trade-in is involved D. ____ Not accounted for seperately, but reflected in the depreciation reserve account Y. ____ Other(s) 1/ Z. ____ Not applicable
4.4.0	Criteria for Capitalization. (Enter (a) the minimum dollar amount of expenditures which are capitalized for acquisition, addition, alteration, donation and improvement of capital assets, and (b) the minimum number of expected life years of assets which are capitalized. If more than one dollar amount or number applies, show the information for the majority of your capitalized assets, and enumerate on a continuation sheet the dollar amounts and/or number of years for each category or subcategory of assets involved which differs from those for the majority of assets.) A. Minimum Dollar Amount ____ B. Minimum Life Years ____
4.5.0	Group or Mass Purchase. Are group or mass purcheses (initial complement) of similar items, which individually are less than the capitalization amount indicated above, capitalized? (Mark one.) A. ____ Yes 1/ B. ____ No 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) IV-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART V- OTHER COSTS AND CREDITS NAME OF REPORTING UNIT

Item No.	Item Description
	Part V
5.1.0	Method of Charging Leave Costs. Do you charge vacation, sick, holiday and sabbatical leave costs to sponsored agreements on the cash basis of accounting (i.e., when the leave is taken or paid), or on the accrual basis of accounting (when the leave is earned)? (Mark applicable line(s)) A. ____ Cash B. ____ Accrual 1/
5.2.0	Applicable Credits. This item is directed at the treatment of "applicable credits" as defined in Section C of OMB Circular A-21 and other incidental receipts (e.g., purchase discounts, insurance refunds, library fees and fines, parking fees, etc.). (Indicate how the principal types of credits and incidental receipts the institution receives are usually handled.) A. ____ The credits/receipts are offset against the specific direct or indirect costs to which they relate. B. ____ The credits/receipts are handled as a general adjustment to the indirect pool. C. ____ The credits/receipts are treated as income and are not offset against costs. D. ____ Combination of methods 1/ Y. ____ Other 1/ 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) V-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part VI This part covers the measurement and assignment of costs for employee pensions, post retirement benefits other than pensions (including post retirement health benefits) and insurance. Some organizations may incur all of these costs at the main campus level or for public institutions at the governmental unit level, while others may incur them at subordinate organization levels. Still others may incur a portion of these costs at the main campus level and the balance at subordinate organization levels. Where the segment (reporting unit) does not directly incur such costs, the segment should, on a continuation sheet, identify the organizational entity that incurs and records such costs. When the costs allocated to Federally sponsored agreements are material, and the reporting unit does not have access to the information needed to complete an item, the reporting unit should require that entity to complete the applicable portions of this Part VI. (See item 4, page (i), General Instructions)
6.1.0	Pension Plans.
6.1.1	Defined-Contribution Pension Plans. Identify the types and number of pension plans whose costs are charged to Federally sponsored agreements. (Mark applicable line(s) and enter number of plans.) Type of Plan — Number of Plans A. ____ Institution employees participate in State/Local Government Retirement Plan(s) ____ B. ____ Institution uses TIAA/CREF plan or other defined contribution plan that is managed by an organization not affiliated with the institution ____ C. ____ Institution has its own Defined-Contribution Plan(s) 1/ ____
6.1.2	Defined-Benefit Pension Plan. (For each defined-benefit plan (other than plans that are part of a State or Local government pension plan) describe on a continuation sheet the actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.) 1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS NAME OF REPORTING UNIT

Item No.	Item Description
6.2.0	Post Retirement Benefits Other Than Pensions (including post retirement health care benefits) (PRBs). (Identify on a continuation sheet all PRB plans whose costs are charged to Federally sponsored agreements. For each plan listed, state the plan name and indicate the approximate number and type of employees covered by each plan.) Z. [ ] Not Applicable
6.2.1	Determination of Annual PRB Costs. (On a continuation sheet, indicate whether PRB costs charged to Federally sponsored agreements are determined on the cash or accrual basis of accounting. If costs are accrued, describe the accounting practices used, including actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.)
6.3.0	Self-Insurance Programs (Employee Group Insurance). Costs of the self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.) A. ____ When accrued (book accrual only) B. ____ When contributions are made to a nonforfeitable fund C. ____ When contributions are made to a forfeitable fund D. ____ When the benefits are paid to an employee E. ____ When amounts are paid to an employee welfare plan Y. ____ Other or more than one method 1/ Z. ____ Not Applicable
6.4.0	Self-Insurance Programs (Worker's Compensation, Liability and Casualty Insurance.)
6.4.1	Worker's Compensation and Liability. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.) A. ____ When claims are paid or losses are incurred (no provision for reserves) B. ____ When provisions for reserves are recorded based on the present value of the liability C. ____ When provisions for reserves are recorded based on the full or undiscounted value, as contrasted with present value, of the liability D. ____ When funds are set aside or contributions are made to a fund Y. ____ Other or more than one method 1/ Z. ____ Not Applicable 1/ Describe on a Continuation Sheet.

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
6.4.2	Casualty Insurance. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.) A. ____ When losses are incurred (no provision for reserves) B. ____ When provisions for reserves are recorded based on replacement costs C. ____ When provisions for reserves are recorded based on reproduction costs new less observed depreciation (market value) excluding the value of land and other indestructibles. D. ____ Losses are charged to fund balance with no charge to contracts and grants (no provision for reserves) Y ____ Other or more than one method 1/ Z. ____ Not Applicable 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) VI-3

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VII- CENTRAL SYSTEM OR GROUP EXPENSES
	NAME OF REPORTING UNIT

Item No.	Item Description
	DISCLOSURE BY CENTRAL SYSTEM OFFICE, OR GROUP (INTERMEDIATE ADMINISTRATION) OFFICE, AS APPLICABLE. Instructions for Part VII This part should be completed only by the central system office or a group office of an educational system when that office is responsible for administering two or more segments, where it allocates its costs to such segments and where at least one of the segments is required to file Parts I through VI of the Disclosure Statement. The reporting unit (central system or group office) should disclose how costs of services provided by the reporting unit are, or will be, accumulated and allocated to applicable segments of the institution. For a central system office, disclosure should cover the entire institution. For a group office, disclosure should cover all of the subordinate organizations administered by that group office.
7.1.0	Organizational Structure. On a continuation sheet, list all segments of the university or university system, including hospitals, Federally Funded Research and Development Centers (FFRDC's), Government-owned Contractor-operated (GOCO) facilities, and lower-tier group offices serviced by the reporting unit.
7.2.0	Cost Accumulation and Allocation. On a continuation sheet, provide a description of: A. The services provided to segments of the university or university system (including hospitals, FFRDC's, GOCO facilities, etc.), in brief. B. How the costs of the services are identified and accumulated. C. The basis used to allocate the accumulated costs to the benefitting segments. D. Any costs that are transferred from a segment to the central system office or the intermediate administrative office, and which are reallocated to another segment(s). If none, so state. E. Any fixed management fees that are charged to a segment(s) in lieu of a prorate or allocation basis and the basis of such charges. If none, so state.

FORM CASB DS-2 (REV 10/94) VII-1

Subpart 9903.3—CAS Rules and Regulations

13. Section 9903.301 is amended by redesignating the existing introductory text and definitions as paragraph (a) and by adding a new paragraph (b) to read as follows:

9903.301 Definitions.

* * * * *

(b) The definitions set forth below are applicable exclusively to educational institutions and apply to this chapter 99.

Business unit. See 9903.201–2(c)(2)(ii).

Educational institution. See 9903.201–2(c)(2)(i).

Intermediate cost objective. See 9905.502–30(a)(7).

Segment. See 9903.201–2(c)(2)(ii).

14. A new Part 9905 is added to read as follows:

PART 9905—COST ACCOUNTING STANDARDS FOR EDUCATIONAL INSTITUTIONS

Authority: Public Law 100–679, 102 Stat. 4056, 41 U.S.C. 422.

9905.501 Cost accounting standard—consistency in estimating, accumulating and reporting costs by educational institutions.

9905.501–10 [Reserved]

9905.501–20 Purpose.

The purpose of this Cost Accounting Standard is to ensure that each educational institution's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the institution in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual contracts, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting contract. Such comparisons provide one important basis for financial control over costs during contract performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of contracting. The comparisons also provide an improved basis for evaluating estimating capabilities.

9905.501–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accumulating costs* means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) *Actual cost* means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) *Estimating costs* means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) *Pricing* means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) *Proposal* means any offer or other submission used as a basis for pricing a contract, contract modification or termination settlement or for securing payments thereunder.

(7) *Reporting costs* means the providing of cost information to others.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.501–40 Fundamental requirement.

(a) An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the institution's cost accounting practices used in accumulating and reporting costs.

(b) An educational institution's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with the institution's practices used in estimating costs in pricing the related proposal.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not *per se* be deemed an inconsistent application of cost accounting practices under paragraphs (a) and (b) of this subsection when such costs are accumulated and reported in greater detail on an actual cost basis during contract performance.

9905.501–50 Techniques for application.

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate contract costs by individual cost element. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event, the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(1) The classification of elements of cost as direct or indirect;

(2) The indirect cost pools to which each element of cost is charged or proposed to be charged; and

(3) The methods of allocating indirect costs to the contract.

(b) Adherence to the requirement of 9905.501–40(a) of this standard shall be determined as of the date of award of the contract, unless the contractor has submitted cost or pricing data pursuant to 10 U.S.C. 2306(a) or 41 U.S.C. 254(d) (Pub. L. 87–653), in which case adherence to the requirement of 9905.501–40(a) shall be determined as of the date of final agreement on price,

as shown on the signed certificate of current cost or pricing data. Notwithstanding 9905.501–40(b), changes in established cost accounting practices during contract performance may be made in accordance with Part 9903 [48 CFR part 9903].

(c) The standard does not prescribe the amount of detail required in accumulating and reporting costs. The basic requirement which must be met, however, is that for any significant amount of estimated cost, the contractor must be able to accumulate and report actual cost at a level which permits sufficient and meaningful comparison with its estimates. The amount of detail required may vary considerably depending on how the proposed costs were estimated, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating costs. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for estimated costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

9905.501–60 Illustration. [Reserved]

9905.501–61 Interpretation. [Reserved]

9905.501–62 Exemption.

None for this Standard.

9905.501–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.502 Cost accounting standard—consistency in allocating costs incurred for the same purpose by educational institutions.

9905.502–10 [Reserved]

9905.502–20 Purpose.

The purpose of this Standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a contract or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

9905.502–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Direct cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the educational institution are direct costs of those cost objectives.

(4) *Final cost objective* means a cost objective which has allocated to it both direct and indirect costs, and in the educational institution's accumulation system, is one of the final accumulation points.

(5) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified with any final cost objective.

(7) *Intermediate cost objective* means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools and/or final cost objectives.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.502–40 Fundamental requirement.

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

9905.502–50 Techniques for application.

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in contract proposals.

(b) The Disclosure Statement to be submitted by the educational institution will require that the institution set forth its cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the educational institution will set forth in its Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the educational institution, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by educational institutions as a condition of contracting as set forth in Subpart 9903.2.

(c) In the event that an educational institution has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to contracts shall be based upon the educational institution's cost accounting practices used at the time of contract proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the educational institution's disclosed accounting practices, the educational institution may either use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or directly assign all such costs to final cost objectives with which they are specifically identified. In the event the educational institution decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect

cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

9905.502–60 Illustrations.

(a) Illustrations of costs which are incurred for the same purpose:

(1) An educational institution normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, the educational institution intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the contract. Since travel costs of personnel whose time is accounted for as direct labor working on other contracts are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government contract. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) An educational institution normally allocates purchasing activity costs indirectly and allocates this cost to instruction and research on the basis of modified total costs. A proposal for a new contract requires a disproportionate amount of subcontract administration to be performed by the purchasing activity. The educational institution prefers to continue to allocate purchasing activity costs indirectly. In order to equitably allocate the total purchasing activity costs, the educational institution may use a method for allocating all such costs which would provide an equitable distribution to all applicable indirect cost pools. For example, the institution may use the number of transactions processed rather than its former allocation base of modified total costs. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) An educational institution normally allocates special test equipment costs directly to contracts. The costs of general purpose test equipment are normally included in the indirect cost pool which is allocated to contracts. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the educational institution's Disclosure Statement, the allocation of general purpose test equipment costs from the indirect cost pool to the contract, in addition to the directly allocated special test equipment costs, is not considered a violation of the Standard.

(2) An educational institution proposes to perform a contract which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the contract. The educational institution presently has a firefighting force of 10 employees for general protection of its facilities. The educational institution's costs for these latter firemen are treated as indirect costs and allocated to all contracts; however, it wants to allocate the three fixed-post firemen directly to the particular contract requiring them and also allocate a portion of the cost of the general firefighting force to the same contract. The institution may do so but only on condition that its disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is the institution's practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

9905.502–61 Interpretation.

(a) 9905.502, Cost Accounting Standard—Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions, provides, in 9905.502–40, that "* * * no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective."

(b) This interpretation deals with the way 9905.502 applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the Standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under 9905.502, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such a specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the educational institution.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the educational institution, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

9905.502–62 Exemption.

None for this Standard.

9905.502–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.505 Accounting for unallowable costs—Educational institutions.

9905.505–10 [Reserved]

9905.505–20 Purpose.

(a)(1) The purpose of this Cost Accounting Standard is to facilitate the negotiation, audit, administration and settlement of contracts by establishing guidelines covering:

(i) Identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and

(ii) The cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs.

(2) The Standard is predicated on the proposition that costs incurred in carrying on the activities of an educational institution—regardless of the allowability of such costs under Government contracts—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This Standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

9905.505–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Directly associated cost* means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

(2) *Expressly unallowable cost* means a particular item or type of cost which,

under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Unallowable cost* means any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost reimbursements, or settlements under a Government contract to which it is allocable.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.505–40 Fundamental requirement.

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a contracting officer's written decision furnished pursuant to contract disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph (b) of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

9905.505–50 Techniques for application.

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b)(1) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification. The Standard does not require such cost identification for purposes which are not relevant to the determination of Government contract cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include:

(i) The segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account,

(ii) The development and maintenance of separate accounting records or workpapers, or

(iii) The use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs.

(2) Educational institutions may satisfy the visibility requirements for estimated costs either:

(i) By designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or

(ii) By description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the educational institution reach agreement on an alternate method that satisfies the purpose of the Standard.

9905.505–60 Illustrations.

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a contract, on the basis that these particular costs were not required for performance and were not authorized by the contract. The contracting officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the contracting officer's decision, the educational institution must clearly identify the disallowed direct labor and direct material costs in the institution's accounting records and reports covering any subsequent submission which includes such costs. Also, if the educational institution's base for allocation of any indirect cost pool relevant to the subject contract consists of direct labor, direct material, total prime cost, total cost input, etc., the institution must include the disallowed direct labor and material costs in its allocation base for such pool. Had the contracting officer's decision been against the auditor, the educational institution would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) An educational institution incurs, and separately identifies, as a part of a service center or expense pool, certain

costs which are expressly unallowable under the existing and currently effective regulations. If the costs of the service center or indirect expense pool are regularly a part of the educational institution's base for allocation of other indirect expenses, the educational institution must allocate the other indirect expenses to contracts and other final cost objectives by means of a base which includes the identified unallowable indirect costs.

(c) An auditor recommends disallowance of certain indirect costs. The educational institution claims that the costs in question are allowable under the provisions of Office Of Management and Budget Circular A–21, Cost Principles For Educational Institutions; the auditor disagrees. The issue is referred to the contracting officer for resolution pursuant to the contract disputes clause. The contracting officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the Circular. Following receipt of the contracting officer's decision, the educational institution must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government contracts, in which such costs are included. If the contracting officer's decision had supported the educational institution's contention, the costs questioned by the auditor would have been allowable and the educational institution would not have been required to provide special identification.

(d) An educational institution incurred certain unallowable costs that were charged indirectly as general administration and general expenses (GA&GE). In the educational institution's proposals for final indirect cost rates to be applied in determining allowable contract costs, the educational institution identified and excluded the expressly unallowable GA&GE costs form the applicable indirect cost pools. In addition, during the course of negotiation of indirect cost rates to be used for bidding and billing purposes, the educational institution agreed to classify as unallowable cost, various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the educational institution and the contracting officer's authorized representatives, indirect cost rates were established, based on the net balance of allowable GA&GE. Application of the rates negotiated to proposals, and to billings, for covered contracts constitutes compliance with the Standard.

(e) An employee, whose salary, travel, and subsistence expenses are charged regularly to the general administration and general expenses (GA&GE), an indirect cost category, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense prohibited by OMB Circular A–21, and is separately identified by the educational institution. In these circumstances, the employee's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the employee's regular duties and responsibilities on which his salary was based, no part of the employee's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

9905.505–61 Interpretation. [Reserved]

9905.505–62 Exemption.

None for this Standard.

9905.505–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.506 Cost accounting period—Educational institutions.

9905.506–10 [Reserved]

9905.506–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for contract cost estimating, accumulating, and reporting. This Standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in contract cost measurements.

9905.506–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Fiscal year* means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.506–40 Fundamental requirement.

(a) Educational institutions shall use their fiscal year as their cost accounting period, except that:

(1) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period as provided in 9905.506–50(a).

(2) An annual period other than the fiscal year may, as provided in 9905.506–50(d), be used as the cost accounting period if its use is an established practice of the institution.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(b) An institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(c) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base as provided in 9905.506–50(e).

9905.506–50 Techniques for application.

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is:

(1) Material in amount,

(2) Accumulated in a separate indirect cost pool or expense pool, and

(3) Allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by 9905.506–40(b) of this Standard shall

include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the institution's cost accounting period, the Standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the institution's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of contracts which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) An institution may, upon mutual agreement with the Government, use as its cost accounting period a fixed annual period other than its fiscal year, if the use of such a period is an established practice of the institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The contracting parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the institution,

(3) The annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f)(1) When a transitional cost accounting period is required under the provisions of 9905.506–40(a)(3), the institution may select any one of the following: (i) The period, less than a year in length, extending from the end of its previous cost accounting period to the beginning of its next regular cost accounting period,

(ii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in paragraph (f)(1) of this subsection with the previous cost accounting period, or

(iii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the next regular cost accounting period.

(2) A change in the institution's cost accounting period is a change in accounting practices for which an adjustment in the contract price may be required in accordance with subdivision (a)(4)(ii) or (iii) of the contract clause set out at 9903.201–4(e).

9905.506–60 Illustrations.

(a) An institution allocates indirect expenses for Organized Research on the basis of a modified total direct cost base. In a proposal for a covered contract, it estimates the allocable expenses based solely on the estimated amount of indirect costs allocated to Organized Research and the amount of the modified total direct cost base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this Standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the contractor's cost accounting period.

(b) An institution whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in an intermediate cost objective, and will be allocated to the benefiting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting period may be allocated to the benefiting cost objectives of that same 8-month period.

(c) An institution changes its fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, it has a 5-month transitional "fiscal year." The same 5-month period must be used as the transitional cost accounting period; it may not be combined as provided in 9905.506–50(f), because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as its regular cost accounting period. The change in its cost accounting period is a change in accounting practices; adjustments of the contract prices may thereafter be required in accordance with subdivision (a)(4) (ii) or (iii) of the contract clause at 9903.201–4(e).

(d) Financial reports are prepared on a calendar year basis on a university-wide basis. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a twelve month period ended June 30. The contracting parties agree to use the period ended June 30 and they agree to overhead rates on the June 30 basis. They also agree on a technique for prorating fiscal year assignment of the university's central system office expenses between such June 30 periods. This practice is permitted by the Standard.

(e) Most financial accounts and contract cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a "vacation year" which ends September 30 each year. Vacation expenses are estimated uniformly during each "vacation year." Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted under 9905.506–50(b).

9905.506–61 Interpretation. [Reserved]

9905.506–62 Exemption.

None for this Standard.

9905.506–63 Effective date.

This Standard is effective as of January 9, 1995. For institutions with no previous CAS-covered contracts, this Standard shall be applied as of the start of its next fiscal year beginning after receipt of a contract to which this Standard is applicable.

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federal register

Tuesday
November 8, 1994

Part III

Environmental Protection Agency

40 CFR Part 264, et al.
Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Enforcement Authority; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 270, and 271

[FRL–5100–2]

RIN 2050–AD55

Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Enforcement Authority

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the regulations under the Resource Conservation and Recovery Act (RCRA) in two areas. First, the Agency is proposing to remove the current requirement for a post-closure permit, and allow the Agency to use alternative authorities to address facilities with units requiring post-closure care. In addition, the Agency is proposing to amend the regulations governing State authorization to require authorized States to adopt, as part of an adequate enforcement program, authority to address corrective action at interim status facilities. This action also solicits comment on several issues related to closure and corrective action at hazardous waste management facilities.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: Environmental Protection Agency, RCRA Docket (OS–305), 401 M St., SW., Washington, DC 20460. Commentors should send one original and two copies and place the docket number (F–94–PCPP–FFFFF) on the comments. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except for Federal holidays. Docket materials may be reviewed by appointment by calling 202–260–9327. A maximum of 100 pages of material may be copied at no cost from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline (1–800–424–9346) toll free, or (202–260–9327) in Washington, D.C. (for technical information); Barbara Foster (703–308–7057), Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, Washington D.C. 20460 (issues related to closure or post-closure care), or Ellen Kandell (703–603–8996), Office of Enforcement and Compliance Assurance, Mail Code 5502G, U.S. Environmental Protection Agency, Washington, DC 20460 (enforcement-related issues).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are proposed under the authority of sections 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

II. Proposed Provisions Related to Closure and Post-Closure Requirements

A. Background Information

1. Overview of RCRA Permit Requirements

Section 3004 of the Resource Conservation Recovery Act (RCRA) requires the Administrator of EPA to develop regulations applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities, as necessary to protect human health and the environment. Section 3005 requires the EPA Administrator to promulgate regulations requiring each person owning or operating a treatment, storage, or disposal facility to have a permit, and to establish requirements for permit applications. Recognizing that the Agency would require a period of time to issue permits to all facilities, Congress provided, under section 3005(e) of RCRA, that qualifying owners and operators could obtain "interim status" and be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of continuing hazardous waste management operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued numerous regulations to implement RCRA requirements for hazardous waste management facilities. These regulations include the standards of 40 CFR part 264 (which apply to facilities that have been issued RCRA

permits), part 265 (which apply to interim status facilities), and part 270 (which provide standards for permit issuance). The general requirements for closure are found at 40 CFR parts 264 and 265, subpart G.

2. The Closure Process

The closure regulations at 40 CFR parts 264 and 265, subpart G require owners and operators of hazardous waste management units to close these units in a manner that is protective of human health and the environment and that minimizes the post-closure release of hazardous constituents to the environment. These regulations also establish procedures for closure: they require owners and operators to submit closure plans to the Agency for their hazardous waste management units, and they require Agency approval of those closure plans.

In addition, parts 264 and 265 establish specific requirements for closure of different types of units. Under parts 264 and 265, subpart L, owners and operators of landfills are required to cover the unit with an impermeable cap designed to prevent infiltration of liquid into the unit; then owners or operators must conduct post-closure care (including maintenance of the cap and groundwater monitoring). Owners and operators of surface impoundments and waste piles have the option either to remove or decontaminate all hazardous waste and constituents from the unit, or to leave waste in place, cover the unit with an impermeable cap, and conduct post-closure care. Closure of land treatment facilities must be conducted in accordance with closure and post-closure care procedures of §§ 264.280 and 265.280. As part of the closure plan approval process, the Agency has the authority to require owners and operators to remove some or all of the waste from any type of unit at the time of closure, if doing so is necessary for the closure to meet the performance standard of § 264.111 or § 265.111.

Owners and operators of incinerators and storage and treatment units (e.g., tanks and containers) are required to remove or decontaminate all soils, structures, and equipment at closure. Owners and operators of tanks who are unable to do so must close the unit as a landfill and conduct post-closure care.

3. Post-Closure Care

As discussed above, owners and operators of hazardous waste management units that close with waste in place must conduct post-closure care at those units, including groundwater monitoring and maintenance of the cap. EPA's current regulations anticipate that these requirements, for the most part, will be imposed through RCRA permits. Under 40 CFR 270.1, permits are required for the post-closure period for any landfill, waste pile, surface impoundment, or land treatment unit that received waste after July 26, 1982, or ceased the receipt of wastes prior to July 26, 1982, but did not certify closure until after January 26, 1983. In addition, § 270.1(c)(5) requires owners and operators of surface impoundments, land treatment units, and waste piles that closed by removal or decontamination under former part 265 standards to obtain a post-closure permit unless they demonstrate that the closure met the current standards for closure by removal or decontamination.

In the case of operating land disposal facilities, the RCRA permit, when first issued, incorporates the closure plan and applicable post-closure provisions. These post-closure conditions become effective after the facility ceases to manage hazardous waste and the closure plan has been implemented. The permit, when issued, also requires compliance with part 264 subpart F groundwater monitoring standards, and (if the permit was issued after November, 1984) it would include terms implementing the facility-wide corrective action requirements of RCRA section 3004(u). Like the post-closure care provisions, these requirements remain in effect after closure of the hazardous waste management unit.

For interim status facilities that close without having obtained an operating permit, the post-closure permit (typically issued after completion of closure) performs a critical regulatory function. First, in securing a permit, the facility must meet the permit application requirements of part 270, which require extensive information on the hydrogeologic characteristics of the site and extent of any groundwater contamination. Second, once the post-closure permit has been issued, the facility then becomes subject to the standards of part 264 rather than part 265, most significantly to the site-specific groundwater monitoring requirements of part 264, subpart F. Third, the post-closure permit imposes facility-wide corrective action to satisfy the requirements of section 3004(u). Finally, the public involvement procedures of the permitting process assure that the public is informed of and has an opportunity to comment on permit conditions.

4. Developments Since 1982

Though EPA has amended the 1982 subpart G regulations on several occasions, the basic closure process and the requirement for a post-closure permit remain in place. Several significant developments since 1982, however, suggest that the closure process and standards should be revisited.

a. *The agency has gained experience in the area of closure and post-closure.* In 1982, when the regulatory structure for closure was established, the Agency had no experience with closure of RCRA regulated units. Since 1982, the Agency and authorized States have approved thousands of closure plans, and overseen the closure activities taking place under those plans. It has become evident that closure of these units is frequently more complex than EPA envisioned in 1982. In many cases, particularly with unlined land-based units, the unit has released hazardous waste and constituents into the surrounding soils and groundwater. In these cases, the closure activity is not simply a matter of capping a unit, or removing waste from the unit, but instead may require a significant undertaking to clean up contaminated soil and groundwater. The procedures established in the closure regulations were not designed to address these types of activities.

For example, it has become evident that the two options for closure provided in the current regulations (i.e., remove or decontaminate all waste from the unit, or cover the entire unit with an impermeable cap) do not provide the best remedy in all situations. In fact, the requirement that an impermeable cap be placed on the unit if all waste has not been removed may, if read narrowly, discourage implementation of more protective remedies. This issue is discussed later in this preamble.

In addition to gaining experience in the closure process, EPA and the States have issued more than 150 post-closure permits since 1982. In the course of reviewing post-closure permit applications, however, the EPA Regions and States have encountered many facilities where post-closure permit issuance proved difficult or, in some cases, impossible. Generally, the Regions and States have found two major difficulties in post-closure permit issuance. The first is that, in many cases, the facility chose to close, or was forced to close, because it could not comply with part 265 standards—particularly, groundwater monitoring and financial assurance. If a facility cannot meet these requirements, EPA cannot issue a permit to it because section 3005(c) of RCRA requires facilities to be in compliance with applicable requirements at the time of permit issuance. The second difficulty

is that the owner or operator often has little incentive to seek a post-closure permit. Without a strong incentive on the part of the facility owner or operator to provide a complete application, the permitting process can be significantly protracted. These difficulties are discussed further in section IV.A. of this preamble.

b. *The agency has acquired new corrective action authority.* In 1984, the Hazardous and Solid Waste Amendments (HSWA) to RCRA provided EPA with broad new authorities, under sections 3004(u), 3004(v), and 3008(h), to compel corrective action (i.e., cleanup) of facilities subject to regulation under RCRA Subtitle C. Corrective action has since become a major component of the RCRA Subtitle C program. Approximately 1100 hazardous waste management facilities are now in the process of implementing corrective action requirements specified under orders or permits.

The RCRA corrective action authorities, and the process that has been developed for implementing these authorities, require owners and operators to investigate the nature and extent of releases of hazardous waste or hazardous constituents at RCRA facilities (i.e., to soils, groundwater, and other environmental media). Owners and operators are required to investigate releases from solid waste management units at the facility, including releases from "regulated units" not addressed under subpart F of part 264. At the direction of the Agency, owners and operators are also required to characterize the sources of releases (i.e., the units from which wastes or constituents have been released), and to develop options for remediation of the facility. Remediation will typically address cleanup of the media contaminated by releases, and removal or containment of the source.

In practice, the corrective action process is highly site-specific, and involves direct oversight by the reviewing Agency. The process provides considerable flexibility to the Agency to tailor investigations, and to decide on remedies that reflect the conditions and the complexities of each facility. The process of investigating and achieving cleanup goals at facilities is often technically complex, and can take many years to complete. This is the case particularly for groundwater contamination in complex hydrogeologic conditions. Given the site-specific nature of corrective action, the technical challenges involved, and the large number of RCRA facilities that may require cleanup, EPA is pursuing an implementation strategy for the corrective action program that involves assessing the environmental priority of each facility from the standpoint of its need for corrective action, and focusing the program's resources on high priority facilities. This implementation strategy is discussed in more detail below.

c. *The agency has developed a strategy for addressing worst sites first under RCRA.* In 1990, EPA conducted the RCRA Implementation Study (RIS). This was the Agency's first comprehensive, in-depth evaluation of the RCRA hazardous waste program, its evolution, and its future. EPA produced the RIS after extensive discussion with stakeholders, private and public, in the RCRA program (i.e., industry, environmental groups, States, and the Agency). The RIS set forth a series of detailed recommendations regarding how to best ensure effective implementation of the RCRA program. An underlying theme throughout was the need to identify sound, environmentally-based implementation priorities in each area of the RCRA program and to demonstrate that those priorities are being effectively and efficiently addressed. The RIS advocated the use of strategic planning to define expectations and make choices among competing priorities.

In response to the RIS recommendations, EPA has developed and is implementing a comprehensive strategy for addressing the RCRA treatment, storage, and disposal universe. At the heart of this strategy is the principle that EPA and the authorized States should address the universe of hazardous waste management facilities on the basis of environmental priorities. Further, at any given site, EPA or the State should use whatever regulatory authority is best suited to achieving environmental success. One essential element of this strategy is a system to prioritize facilities based upon their risk. This allows the Agency to address the RCRA universe on a "worst-site-first" basis. Another is providing the regulator flexibility in choosing regulatory options to address a given problem, rather than focusing on the number of particular regulatory actions taken.

This approach is consistent with the Agency's response to recent recommendations from the General Accounting Office (GAO). In two recently issued reports, GAO evaluated EPA's progress in implementing the RCRA closure and post-closure program at land disposal facilities. In the first report, entitled *Progress in Closing and Cleaning Up Hazardous Waste Facilities,* issued in May of 1991, GAO criticized the Agency's progress in closing land disposal facilities that lost interim status in 1985. The report cited limited progress in this area as a basis for its concern that the Agency was placing too little emphasis on closing land disposal facilities, even though these facilities may pose some of the greatest environmental threats. In April of 1992, GAO issued another report entitled *Impediments Delay Timely Closing and Cleanup of Facilities.* This report criticized the Agency's progress in issuing post-closure permits and cited facility non-compliance with groundwater monitoring requirements as a result of permitting delays. In both of these reports, GAO recommended that EPA devote more of its time and resources specifically to addressing closed and closing land disposal facilities.

The Agency agrees with GAO's concerns about addressing risk at closed and closing land disposal facilities, but believes that those risks must be addressed within the context of the Agency's overall strategy for implementing the RCRA program. The Agency has, for several years, been carrying out a combined closure and corrective action strategy that relies on all of EPA's authorities to address environmental issues at all RCRA facilities on a worst-site-first basis. The foundation of this strategy is the Agency's system for ranking RCRA facilities based on environmental priority. This system was developed to enable EPA to focus its resources on deterring violations and remediating contamination at RCRA facilities that present the highest priority for risk reduction and prevention. (It should be noted that, because of their nature, closed and closing land disposal facilities often rank as high priority.) EPA's priority-based approach dictates that resource commitments be made based on the priority ranking of facilities. This strategy acknowledges that activities to address risk at high priority facilities may take precedence over procedural activities (e.g., permitting) at lower priority facilities. EPA believes that this priority-based approach to RCRA implementation provides the best use of available resources by ensuring progress at high priority facilities across the RCRA universe, including closed and closing land disposal facilities.

5. Response to Post-1982 Developments

In light of the developments discussed above, the Agency is reviewing the current closure and post-closure regulations. EPA's goals are to make the closure process more realistic,

integrate the closure and corrective action processes, and provide greater flexibility in addressing risks at closed sites. Today's notice is the first step in that direction. It sets out several amendments to the closure regulations, including a new approach to addressing post-closure needs at facilities currently subject to post-closure permit requirements.

In addition to the regulatory changes in today's proposal, section IV of this preamble solicits comment on further changes to the closure process. After reviewing public comment submitted in response to today's notice, the Agency will consider proposing further revisions to the closure process.

6. State Involvement in Development of This Proposed Rule

Under the terms of Executive Order 12875, the Federal Government is urged to establish regular and meaningful consultation and collaboration with State, local, and tribal governments on Federal matters that significantly or uniquely affect their communities.

Because this proposed rule would affect State RCRA programs, we provided the rule to the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to obtain their reaction. Seven States submitted written comments and nine States participated in a conference call with EPA on April 7, 1994, to discuss States' concerns. The States' written comments and a summary of the April 7 conference call can be found in the docket for this proposed rule.

The States supported the proposal to remove the post-closure permit requirement. The States strongly supported removing the distinction between closing regulated units and solid waste management units, which is discussed in section III.B. of this preamble.

Generally, States supported the inclusion of a corrective action order authority as part of an adequate enforcement program. Concerns were expressed that the Agency's review procedure of such order authorities would be duplicative of efforts undertaken during a State's authorization of HSWA corrective action at permitted facilities. The Agency recognizes that in some cases States' corrective action enforcement authorities may, indeed, have been reviewed by EPA during the authorization process for section 3004(u) authority, and determined to meet the requirements of this proposal. Where EPA determines this is the case, this proposed rule would not require States to submit additional information; in addition, EPA would minimize its review.

B. Summary and Discussion of Proposed Provisions

Today's notice proposes a new approach to addressing post-closure environmental needs at facilities that have not received an operating permit, and that have units requiring post-closure care. It proposes to modify the post-closure permit requirement to allow the Agency either to issue a permit to address post-closure care at a facility, or to impose the same substantive requirements at the facility using alternative legal authorities (e.g., a post-closure plan to address the regulated unit, and an enforcement action to address the solid waste management units at the facility).

Today's proposal reaffirms that post-closure care requirements apply to all landfills, waste piles, surface impoundments, and land treatment units that received waste after July 26, 1982, or that ceased the receipt of wastes prior to July 26, 1982, but did not certify closure until after January 26, 1983. Under current regulations at § 270.1(c), all facilities subject to post-closure care requirements must obtain RCRA permits. Today's proposal is intended to allow EPA or an authorized State to use any other available legal authority as an alternative to the post-closure permit, as long as that authority provides the same level of protection and public participation as does the post-closure permit.

As discussed above, under the current regulations, facilities that cease operation without obtaining a permit are required to close and conduct post-closure care under the self-implementing standards of Part 265 until the Agency issues a post-closure permit to the facility. This proposed rule would not modify those interim status standards applicable to closed and closing land disposal facilities. Thus, for example, those facilities would continue to be required to conduct closure under approved closure plans, conduct post-closure care under an approved post-closure plan, and obtain financial assurance.

As a result of this proposal, rather than issue a post-closure permit to impose requirements beyond the self-implementing interim status standards, the Agency could use a variety of regulatory authorities. To ensure that the authority chosen by the Agency will provide the same level of environmental protection, this proposal specifically requires owners and operators to comply with the same regulatory requirements that would be imposed through a post-closure permit when those requirements are imposed by the Agency, regardless of the regulatory authority selected. Those requirements include the requirements of Part 264, Subpart F, facility-wide corrective action, and public involvement at the time of remedy selection (if corrective action is required).

The Agency is proposing to remove the permit requirement and allow the use of other authorities at post-closure facilities because it has concluded that a permit is not always the best authority for addressing environmental risk at these facilities. In fact, as was mentioned earlier, in the course of issuing post-closure permits over the past several years, EPA and the States have encountered many facilities at which post-closure permit issuance was difficult or, in some cases, impossible. Several obstacles to post-closure permit issuance have been identified.

One obstacle is a lack of incentive on the part of post-closure permit applicants. Unlike facility owners or operators seeking operating permits, owners or operators of closed or closing facilities often have little incentive to obtain post-closure permits, particularly where the post-closure unit is the only unit at the facility. While permit denial is a significant threat to a facility owner seeking an operating permit, it makes little difference to the owner of a facility that is already closed and that no longer actively manages hazardous waste. In the past, where the owner or operator has been uncooperative in obtaining a post-closure permit, the Agency and authorized States have taken enforcement actions to facilitate the permit issuance process, and to bring facilities into compliance with the applicable regulatory requirements so that a permit could be issued. Today's rule would allow the Agency to bring an uncooperative facility into compliance with the regulations through an enforcement action, and relieve the Agency of its obligation to force the facility through the permit application process, which was generally designed under the assumption that the permit applicant desired a permit. Under the proposal, while the Agency would not lose its authority to issue a post-closure permit at the facility by taking action under an alternative authority (e.g., an enforcement action), it would no longer be required to do so if all applicable regulatory requirements have been imposed at the facility.

The financial status of the facility owner or operator is often another obstacle. Closed and closing land disposal facilities subject to post-closure permit requirements are in many cases

businesses that are no longer operating and may be in poor financial condition, or they may be without significant resources. In fact, many facilities currently in the closure universe were forced to close because they could not meet the RCRA financial assurance requirements. Yet meeting these requirements is a precondition for receiving an RCRA permit, regardless of whether it is an operating permit or a post-closure permit. Where an owner or operator is financially unable to meet the threshold post-closure financial requirements for permit issuance, the current regulations do not allow EPA to issue a post-closure permit—despite the regulatory requirement that these facilities obtain such a permit.

Similarly, some closing facilities are located in areas where it is difficult to satisfy the Part 264, Subpart F and Part 270 groundwater monitoring standards. For example, in some areas of complex hydrogeology, it may be technically impractical for a facility to install an adequate groundwater monitoring system. The regulatory agency would deny a permit application from an operating facility in such a situation, because denial prevents further receipt of waste and forces the facility to close. Denial of a post-closure permit application from a closed facility, however, is meaningless in such a situation, because it would have no effect on management of wastes already disposed of at the site and would leave any environmental problems there unaddressed.

To address environmental risk at facilities such as those described above, Regions and States have frequently utilized legal authorities other than permits. Use of enforcement actions enables the Agency to place these facilities on a schedule of compliance for meeting financial assurance and/or groundwater monitoring requirements over a period of time. And, even where enforcement actions cannot bring about full regulatory compliance (e.g., where the owner or operator cannot secure financial assurance), they will enable the Agency to prescribe actions to address the most significant environmental risks at the facility. For example, EPA has often issued corrective action orders under the authority of section 3008(h) to address releases from solid waste management units at these facilities. In other cases, Federal or State Superfund authorities have been used to address cleanup at sites. However, under the current regulations, EPA or the State is still required to issue a post-closure permit even where the environmental risks associated with the facility have been addressed through other authorities.

EPA believes that this proposed rule, by allowing the use of alternative authorities will enable the Agency more effectively to address post-closure care at a significant number of uncooperative and financially burdened facilities. The Agency recognizes, however, that today's proposal may have little practical effect on the Agency's ability to address those facilities that are in too precarious a financial state to meet even an extended schedule of compliance for financial assurance or groundwater monitoring. It is important to note, however, that EPA's prioritization strategy considers the financial status of facilities and elevates in importance those whose financial condition indicates that timely action will increase the likelihood that owners or operators will be able to meet their post-closure obligations. And, in some cases, where the owner or operator's financial condition prevents it from fulfilling its obligations under RCRA, the facility may be referred to Superfund.

EPA believes that more flexible use of the full range of available authorities will provide a more comprehensive approach to ensuring effective post-closure care at RCRA facilities. This approach will enable the Agency to address facilities on a worst-site-first basis using the regulatory or legal authority that is most effective at a given site. Examples of when an authority other than a post-closure permit may be most appropriately applied include cases where the owner or operator is financially incapable of meeting the threshold requirements for permit issuance, such as compliance with the financial assurance requirements, or where the owner or operator may be uncooperative and an enforcement action is necessary.

On the other hand, a post-closure permit will generally be the preferable mechanism for cooperative facilities capable of meeting financial assurance requirements. It has been the experience of several EPA Regions and States that many facility owners or operators will cooperate in the development of a post-closure permit, while they would oppose the same conditions in an enforcement order. Additionally, permit issuance may be advantageous in some situations because it enables the Regional Administrator or State Director to invoke the omnibus authority of section 3005(c)(3) of RCRA at facilities with special environmental needs that are outside the scope of the current regulations. In these cases, post-closure permits would continue to provide the best means of addressing the needs of the facility.

EPA has always interpreted sections 3004(a) and 3005 of RCRA to authorize—but not compel—the issuance of permits to implement post-closure care requirements at facilities that have ceased operating. As EPA explained when it first established the post-closure permit requirement, it "could have issued regulations * * * that are enforceable independent of a permit to impose many of the requirements that apply to a facility after closure * * *" (47 FR 32366, July 26, 1982). EPA, however, believed that permits would be the most effective enforcement vehicle, primarily because they facilitate the development of site-specific conditions tailored to individual waste management facilities. *Id.* The U.S. Court of Appeals for the District of Columbia Circuit has also ruled that the statute authorizes, but does not require, post-closure permits. (*See In re Consolidated Land Disposal Regulation Litigation*, 938 F2d 1386, 1388–89 (D.C. Cir. 1991)).

Today's proposed amendments would eliminate the regulatory requirement that EPA issue permits to all facilities subject to post-closure care requirements. This proposal, EPA has concluded, not only makes policy sense but is fully consistent with the statute, because the post-closure permit requirement is a regulatory rather than a statutory construct.

Although EPA is proposing to allow alternatives to post-closure permits, today's proposed regulations ensure that all substantive conditions currently imposed through post-closure permits are imposed at all facilities subject to post-closure care requirements, regardless of which regulatory or legal authority is used. This proposal specifies that the Agency must impose at these facilities, through enforceable legal authorities, the requirements of part 264, subpart F and facility-wide corrective action. In addition, this proposal would require that the owner or operator provide to the Agency the same information required by the permit issuance process. It would also maintain the requirement for facility-wide corrective action, and it would require public involvement at the time of remedy selection, if corrective action were necessary, or when the Agency determines that corrective action is not required at the facility.

These provisions would ensure that all the substantive requirements of a post-closure permit would be imposed when an alternative mechanism was used. In combination with requirements already imposed on interim status

facilities through the part 265 interim status standards, these minimum requirements would ensure that all aspects of post-closure care are fully addressed.

C. Section-By-Section Analysis

Today's proposal would modify several provisions of the RCRA regulations in both the permit issuance procedures of part 270, as well as the requirements for interim status facilities of part 265. Each modification is described in detail below.

1. Section 270.1(c)—Use of Alternative Legal Authorities to Address Post-Closure Care

EPA is proposing two amendments to § 270.1(c). First, the Agency is proposing to revise § 270.1(c) to provide an alternative to the requirement that post-closure permits be issued to closed landfills, waste piles, surface impoundments, and land treatment units, where post-closure care and corrective action are imposed through an enforceable alternative authority. Second, EPA is proposing a new § 270.1(c)(7), which allows the EPA Regional Administrator (or an authorized State) to use alternate authorities to impose post-closure care requirements in lieu of a permit. Under this section, the Agency would be required to impose on post-closure facilities subject to alternative authorities the basic requirements imposed through post-closure permits. (These requirements are specified in proposed § 265.121, described below.) However, the Agency would have the discretion to impose those conditions through a permit, a RCRA enforcement authority, a Superfund authority, or a combination of these or other legal authorities. Similarly, an authorized State could impose conditions under a State cleanup authority. What is essential, in EPA's view, is that facilities meet the substantive standards currently imposed through post-closure permits, not that a specific regulatory authority be used to impose these standards.

2. Section 265.121—Interim Status Post-Closure Care Requirements for Facilities Subject to Section 270.1(c)(7)

The current regulations at §§ 265.117 through 265.120 govern post-closure care at interim status regulated units that close and conduct post-closure care without obtaining a permit. Under today's proposal, regulated units would continue to be subject to the requirements of part 265 for post-closure care, including the requirement to obtain a post-closure plan. Following the post-closure care period, the regulated units would remain in interim status until and unless interim status were terminated by the Agency through one of the available means (e.g., final permit determination).

However, the current interim status post-closure care requirements are in some respects less stringent than post-closure permit requirements, specifically, the groundwater requirements of part 264, the facility-wide corrective action requirements, and the public involvement procedures associated with permit issuance. Therefore, to assure that facilities that do not obtain a post-closure permit are subject to the same requirements as those that do, today's proposal would add a new § 265.121. That section, which would be applicable to those facilities subject to the requirements of § 270.1(c)(7) that close and conduct post-closure care without obtaining a permit, would require that those facilities meet the same substantive requirements as permitted facilities must meet before the Regional Administrator can consider the post-closure needs at the facility to be addressed. Those requirements are described below.

a. *Part 264 subpart F ground-water monitoring and corrective action program (sections 264.90–264.100).* Currently, the post-closure permit imposes part 264, subpart F requirements at closed land disposal units. Today's proposal would require that post-closure enforcement actions or other mechanisms used as alternatives to post-closure permits include conditions imposing part 264, subpart F standards on closed and closing land disposal units. Part 265 groundwater monitoring requirements for interim status land disposal units are less comprehensive than those established under the part 264, subpart F standards for permitted facilities. Whereas part 265 sets minimum standards for the installation of detection monitoring wells (e.g., one upgradient and three downgradient wells), part 264 establishes broader standards for establishing a more comprehensive monitoring system to ensure early detection of any releases of hazardous constituents. The specific details of the system are worked out through the permitting process. Consequently, compliance with part 264 standards usually results in a more extensive network of monitoring wells. Similarly, part 265 specifies a limited set of indicator parameters that must be monitored, while part 264 establishes a more comprehensive approach under which the owner or operator is required to design a monitoring program around site-specific indicator parameters. As a result, monitoring systems designed in accordance with part 264 standards are specifically tailored to the constituents of concern at each individual site. Additionally, part 264 compliance monitoring standards are more comprehensive than part 265 standards both in terms of monitoring frequency and the range of constituents that must be monitored. Finally, the part 264, subpart F regulations provide for corrective action for releases to groundwater whereas part 265 does not.

In light of these differences, the Agency is proposing that all units subject to post-closure care requirements be required to meet part 264, subpart F standards. This approach is designed to ensure equivalent protection of human health and the environment at all facilities, regardless of which legal authority used to address post-closure care.

b. *Facility-wide corrective action.* Under section 3004(u) of RCRA, which was added to the statute as part of the 1984 Hazardous and Solid Waste Amendments (HSWA), hazardous waste permits issued after November 8, 1984, must include provisions requiring the facility owner or operator to take corrective action to address releases of hazardous waste or hazardous constituents from solid waste management units (SWMUs) at the facility. Section 3004(v) of HSWA extends corrective action authority to cover releases migrating off-site; section 3008(h) provides EPA enforcement authority to require corrective action at interim status facilities.

EPA has codified corrective action requirements at 40 CFR 264.101 and currently implements these requirements through the permitting process; at the same time, the Agency has made extensive use of the section 3008(h) authority to impose corrective action at interim status facilities. In addition, to facilitate the process, EPA proposed more extensive corrective action regulations in July, 1990, under a new part 264, subpart S, and recently finalized several sections of that proposal related to temporary units and corrective action management units (*see* 58 FR 8658, February 16, 1993). The subpart S proposal set forth EPA's interpretation of the statutory requirements at that time.

EPA recognizes that corrective action requirements are a central aspect of the HSWA amendments and that the post-closure permit currently provides the primary means of ensuring that corrective action will be adequately addressed at RCRA land disposal facilities that close without first

receiving an operating permit. In allowing alternatives to the post-closure permit, EPA has no intention of undercutting or limiting its corrective action authority or the scope of the corrective action program. Consistent with this principle, today's proposal would require that authorities used at post-closure facilities as an alternative to post-closure permits impose corrective action requirements consistent with the statute and § 264.101 of the regulations, as described in this preamble.

Today's proposal would not specify the authorities that EPA or a State could use to impose corrective action as an alternative to a post-closure permit—only that the authority must be consistent with RCRA corrective action requirements. Certainly, RCRA section 3008(h) orders would be appropriate, but EPA does not believe it makes sense to limit alternative authorities to this section. For example, many States (including States not yet authorized for section 3004 (u) and (v) corrective action authority), have their own cleanup or State Superfund authorities that are consistent with RCRA corrective action authority. EPA believes that actions under these authorities should be allowed as alternatives to post-closure permits, as long as they are consistent with RCRA corrective action requirements. Similarly, if a facility is being addressed under a federal Superfund action, and the action addresses all releases at the site, issuance of a post-closure permit should be unnecessary.

In requiring facility-wide corrective action consistent with RCRA section 3004 (u) and (v) provisions, EPA does not intend to require that alternative authorities use procedures identical to those in EPA's Subpart S proposal. For example, compliance with the NCP procedures for remedy selection would satisfy these proposed requirements. EPA wishes to emphasize, however, that to be considered consistent, an alternative approach to corrective action at a facility would have to include facility-wide assessments, and it would have to address possible releases (including off-site releases) from all solid waste management units within the facility boundary. Anything less than that, in EPA's view, would not meet the basic requirements of RCRA sections 3004 (u) and (v). EPA believes that this proposed approach is appropriate because it provides reasonable flexibility for regulatory agencies using available authorities to address environmental problems at RCRA sites. At the same time, however, the Agency requests comment on this approach and suggestions for alternatives.

c. Public participation. Section 7004 of RCRA requires public participation in the permit issuance process. EPA has codified this requirement and has established specific public participation procedures for RCRA permitting at 40 CFR part 124. In the case of post-closure permits, these procedures assure that the public has access to information gathered by the Agency about the facility, and has an opportunity to review the Agency's decisions related to the regulated unit and to facility-wide corrective action. In addition, EPA's permit regulations in part 270 typically require a permit modification—with public participation—at the time a corrective action remedy is selected, if section 3004(u) corrective action is required as part of a facility's permit.

In developing today's proposal, the Agency sought to assure that by allowing alternative post-closure mechanisms, the Agency would provide adequate, mandatory public participation in the post-closure and corrective action processes. EPA believes that the current interim status procedures for closure and post-closure plan approval and modification (§§ 265.112 and 265.118) provide for acceptable public participation. While the procedures for plan approval are not identical to those used in permit issuance, they do require public notice and provide an opportunity for written public comment; they also include an opportunity for a hearing.[1] In EPA's view, these requirements ensure a reasonable opportunity for public participation in decisions that affect long-term care of the regulated unit.

At the same time, EPA acknowledges that the public currently has no absolute assurance that it will have an opportunity to participate in the corrective action process when corrective action is imposed through an enforcement order. EPA's enforcement programs have retained discretion to limit public participation when circumstances require it. However, where orders will operate in lieu of permits (which always require public participation), EPA is proposing to limit this discretion and require a minimum level of public participation for all facilities, except in rare cases as described below.

In proposing to make public participation mandatory, EPA notes that many cleanup authorities, including the federal Superfund authority and a number of State cleanup programs, already provide for significant levels of public participation in the majority of cases. In the case of CERCLA actions, procedures for public participation at point of remedy selection are established in § 300.430(f) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In addition, the CERCLA Community Relations Program guidance ("Community Relations in Superfund, A Handout") provides for extensive involvement of the public in Superfund actions. This guidance sets forth a community relations plan designed to promote two-way communication between the public and the lead Agency. In the case of corrective action imposed through RCRA enforcement orders, EPA has issued guidance announcing its policy to provide opportunity for public involvement at the time of remedy selection (*see* "RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comment," issued on April 29, 1991, which is available in the docket for this rulemaking).

Today's proposal would establish, at § 265.121(b), minimum requirements for public involvement in the remedy selection process. These requirements would apply to both regulated units and solid waste management units subject to the requirements of § 270.1(c)(7), at which closure and/or corrective action is imposed through an alternative authority, in lieu of a post-closure permit. Section 265.121(b) would require, at the point of remedy selection, public involvement that includes, at a minimum, the following procedures: Public notification of the proposed remedy through a major newspaper; opportunity for public comment (at least 30 days); opportunity for a public meeting; availability of a transcript of the public meeting; availability of written summary of significant comments and information submitted and the EPA or State response; and, if the remedy is significantly revised during the public participation process, a written summary of significant changes or opportunity to comment on a revised remedy selection.

In developing the proposed minimum requirements for public involvement under an alternate mechanism, the Agency intends to provide States and

[1] The specific differences between public participation in permit issuance and post-closure plan approval are: permits allow a 45-day public comment period, plans allow 30 days; opportunity to comment must be noticed in local newspapers and through radio spots for permits, but only in newspapers for plans; the Regional Administrator is required to hold a public hearing if asked in the case of permits, but a hearing on a plan is held at the Regional Administrators discretion; and permit decisions are subject to Agency appeal procedures, while approved plans are not. Both, however, may be challenged in the courts.

Regions the opportunity to continue to use public participation procedures established under existing authorities, provided that they meet the requirements in § 265.121(b). Most Federal and State statutes and regulations already require that affected communities be informed about and involved in decisions regarding response to hazardous releases. In developing today's proposal, the Agency wished to avoid imposing new requirements that would force EPA and States to amend existing public participation procedures in order to use an alternate mechanism in lieu of a permit.

The Agency believes that today's proposal establishes minimum requirements necessary for adequate public involvement that are, at the same time, likely to be met by most public involvement procedures for remedy selection. For example, compliance with either the permit issuance procedures of part 124 or the NCP procedures for remedy selection would satisfy these proposed requirements. Similarly, use of public participation procedures imposed under other Federal and State authorities would also be allowed, if those procedures met the minimum criteria set forth under § 265.121(b) of today's proposal. The Agency solicits comment on the requirements for public involvement at remedy selection proposed today. Specifically, the Agency solicits comment on State or Federal authorities with public involvement requirements that would not satisfy today's proposed rule, and on the adequacy of today's proposed minimum requirements.

While today's proposed rule would require public participation at the point of remedy selection for facilities subject to § 270.1(c)(7), the Agency recognizes that there may be cases where emergency remedial actions may be needed to address immediate threats. Therefore, while today's proposal would ensure a minimum 30-day public comment period for corrective action remedies imposed under an alternative mechanism in most cases, EPA is proposing to allow reduction or elimination of the public comment period if the Regional Administrator determines that even a short delay in the implementation of the remedy would adversely impact human health or the environment. The Agency anticipates that this discretionary authority will be invoked only in rare circumstances. Where the Agency finds it is necessary to implement the remedy prior to the public comment period, § 265.121(b) of today's proposal would require the Regional Administrator to solicit public comment on the remedy before making a determination that the facility's corrective action needs have been addressed in full.

As an alternative to providing an exemption to the public involvement procedures for section 3008(h), as described above, EPA solicits comment on whether to rely on RCRA, CERCLA, and State imminent and substantial endangerment authorities where immediate action is necessary.

Also, the Agency recognizes that corrective action at some facilities subject to § 270.1(c)(7) may have been implemented through a non-permit authority prior to the effective date of today's proposal. In these cases, § 265.121(c) would require the Regional Administrator to evaluate whether the remedy satisfies the requirements of this rule before considering the facility addressed. This process is discussed in more detail in section II.C.4. of this preamble.

d. *Section 270.27 information requirements.* RCRA permitting regulations do not distinguish between information requirements for operating permits and post-closure permits. Facilities seeking post-closure permits must generally provide EPA, as part of their Part B permit applications, the facility-level information required in § 270.14 as well as relevant unit-specific information required in §§ 270.16, 270.17, 270.18, 270.20, and 270.21. EPA needs this information to ensure compliance with part 264 requirements during operation and throughout the post-closure care period. Information required under § 270.14 includes such areas as general inspection schedules, floodplain information, the post-closure plan, the notice of deed or appropriate alternate instrument, closure and post-closure care cost estimates, site characterization and groundwater monitoring for land disposal facilities, and exposure information for landfills and surface impoundments.

The Agency has found that certain of the 270 information requirements are essential to ensuring proper post-closure while others are generally less relevant to post-closure. The most important information for setting long-term post-closure conditions are groundwater characterization and monitoring data, long-term care of the regulated unit and monitoring systems (e.g., inspections and systems maintenance), and information on SWMUs and possible releases. Therefore, EPA is today proposing to add a new section (§ 270.27) to identify that subset of the Part B application information that must be submitted for post-closure permits. Under today's proposal, an owner or operator seeking a post-closure permit would have to submit only that information specifically required for such permits under newly added § 270.27, unless otherwise specified by the Regional Administrator. The specific items required in post-closure permit applications are:

—A general description of the facility;
—A description of security procedures and equipment;
—A copy of the general inspection schedule;
—Justification for any request for waiver of preparedness and prevention requirements;
—Facility location information;
—A copy of the post-closure plan;
—Documentation that required post-closure notices have been filed;
—The post-closure cost estimate for the facility;
—Proof of financial assurance;
—A topographic map; and
—Information regarding protection of groundwater (e.g., monitoring data, groundwater monitoring system design, site characterization information)
—Information regarding solid waste management units at the facility.

In many cases, this information will be sufficient for the permitting agency to develop a draft permit. However, since RCRA permits are site-dependent, EPA believes it is important that the Regional Administrator have the ability to specify additional information needs on a case-by-case basis. Accordingly, to ensure availability of any information needed to address post-closure care at surface impoundments (§ 270.17), waste piles (§ 270.18), land treatment facilities (§ 270.20) and landfills (§ 270.21), § 270.27 of today's proposal would authorize the Regional Administrator to require any of the Part B information specified in these sections in addition to that already required for post-closure permits at these types of units. This approach would enable the Regional Administrator to require additional information as needed but would not otherwise compel the owner or operator to submit information that is irrelevant to post-closure care determinations.

To ensure substantive equivalency of authorities used in lieu of post-closure permits, today's proposal would require that part 270 information specifically required for post-closure permits must also be provided upon request by the Agency when an alternative authority is used in place of a post-closure permit. EPA requests comment on this approach.

3. Post-Closure Plans and Permits

EPA anticipates that, in many cases where a post-closure permit is inappropriate or difficult to issue, the regulatory agency will choose to issue a post-closure plan under interim status authorities to address long-term care of the regulated unit (e.g., groundwater monitoring and maintenance of the cap) and a section 3008(h) order for facility-wide corrective action. EPA generally believes that this approach provides a reasonable alternative to a post-closure permit, as long as the substantive post-closure care requirements of proposed § 265.121 are satisfied.

EPA believes that, for the most part, proposed § 265.121 requirements can be satisfied using this approach. The section 3008(h) corrective action order would be structured to address all SWMUs on the facility, and public participation, under EPA's current policy, would occur at the time of corrective action remedy selection. The post-closure plan approval would be subject to public comment, in accordance with § 265.118, and it would in most respects impose appropriate long-term care requirements.

To assure that the post-closure plan will provide the same degree of environmental protection as would a permit, EPA is proposing in § 265.121(a)(1) to provide EPA the authority to impose part 264 groundwater monitoring requirements through the part 265 post-closure plan process. In addition, proposed § 265.121(a)(3) would provide EPA the authority to require submission of information necessary to impose part 264 groundwater monitoring requirements through a post-closure plan. This authority would expand the options available to the Agency to address post-closure facilities, without affecting the level of environmental protection or public participation.

4. Alternate Authorities Issued Prior to the Effective Date of the Final Rule

It is likely that prior to final promulgation of this rule, EPA and authorized States will have initiated and, in some cases, completed actions under a variety of regulatory authorities, other than post-closure permits, to address post-closure and corrective action at facilities currently subject to post-closure permit requirements. It also is likely that those actions, if taken after promulgation, would have satisfied the requirements of this rule. The Agency does not believe it would make sense to require EPA or the State to go through procedural steps to satisfy regulatory requirements where environmental needs at a facility have been addressed adequately. Therefore, the Agency is proposing, under § 265.121(c), a procedure for the Agency to review activities initiated or conducted in full prior to promulgation of this rule, to determine whether the requirements applicable to the facility have been met.

Under proposed § 265.121(c), EPA would provide public notice of its activities at the facility and its determination that the facility has been addressed, and solicit public comment. After review of public comment, the Agency would determine whether the activities conducted at the facility were adequate to satisfy the requirements of part 265. If the activities were found to be deficient, EPA would impose additional requirements either by amending the existing order, issuing a new order, modifying the post-closure plan, or requiring a post-closure permit.

III. Request for Public Comment on Closure and Post-Closure Related Issues

Today's notice proposes several amendments to the regulations governing closure and post-closure care. It is important to clarify that the regulatory amendments proposed today represent an initial step in a broader effort to improve the existing closure process. The Agency recognizes the need to amend the existing regulations beyond what is proposed today.

Specifically, the Agency recognizes a need to more effectively integrate the closure and corrective action activities at facilities, and to have closure requirements and timeframes that reflect the complexities of such activities. In the following discussion, the Agency solicits comment on both of these issues. In addition to soliciting comment on both specific issues discussed below, the Agency also solicits general comment on the closure process, including impediments to implementing the current requirements and options to improve the process.

A. Regulatory Timeframes

As was discussed above, the current closure regulations were promulgated before the Agency had any experience with closure under RCRA standards; not surprisingly, therefore, they do not always reflect the complexity of closure activities. One oversimplification in the current closure process is the imposition of timeframes for closure activities and closure plan approval. Expectations built based on these timeframes (as well as other factors) have caused GAO to criticize the pace at which the Agency is bringing facilities to closure.

In a report issued in May of 1991, entitled *Progress in Closing and Cleaning Up Hazardous Waste Facilities*, GAO criticized the Agency's progress in completing closure activities at the approximately 1000 land disposal facilities that lost interim status in 1985. GAO pointed to the regulatory timeframes in the closure process and determined that the closure activities should be complete at those facilities. In a later report entitled *Impediments Delay Timely Closing and Cleanup of Facilities*, issued in April of 1992, GAO expressed concerns that owners and operators can almost indefinitely delay the closure process. GAO suggested that the Agency should use the regulatory closure timeframes to prevent prolonged cleanup activities.

The Agency disagrees that the current regulatory timeframes for closure completion could be used to ensure that closure is completed within those timeframes. Rather, the Agency believes, as was discussed earlier in this preamble, that in many cases the timeframes for closure completion do not reflect the technical complexity of the process. In the following discussion, the Agency solicits comment on options for removing or extending the timeframes in the current closure regulations.

1. Closure Plan Review and Approval Process

In 1982, the Agency promulgated regulations that included timeframes for review and approval of closure plans. At the time, the Agency believed the timeframes were reasonable. Under these regulations, EPA must approve, modify, or disapprove a closure plan within 90 days of its initial submission. Upon disapproval of the plan, the owner or operator must submit a new or revised plan within 30 days. The Agency then has 60 days to approve or modify the resubmitted plan.

These timeframes were developed before the Agency had experience implementing closure, and prior to the enactment of HSWA. Since that time, experience has indicated that closures are often more complex than anticipated, particularly for older units requiring corrective action. Consequently, the timeframes established in the regulations often are not met by the Agency and the regulated community. Based on this experience, the Agency today seeks comment on the need to revise existing timeframes, and on alternative approaches to the review and approval process.

EPA specifically seeks comment on the option of eliminating mandatory timeframes. This change would allow

for case-by-case variation in the time allowed for closure plan review and revision. The time required to process individual closure plans varies widely according to the scope and complexity of the closure activity, the quality of the plan submitted, and the extent of revision required. An additional important variable is the need to coordinate closure with corrective action required at the site. In addition to providing flexibility to account for site-specific variation, removing timeframes would allow EPA and the States to prioritize their workloads and to process closure plans on a worst-site first basis.

On the other hand, EPA recognizes the need to maintain accountability for timely and effective implementation of RCRA. Timeframes provide a simple, straightforward means of auditing performance and, by removing them, the Agency may be removing an important means of insuring accountability. In light of this concern, a second alternative may be to retain but extend the current timeframes to more accurately reflect time needed to complete specific closure activities. The Agency is not now suggesting alternate time periods, but solicits comment on specific timeframes that may be more reasonable and appropriate.

2. Timeframes for Completion of Closure Activities

Under existing regulations, facilities must complete closure within 180 days of receipt of the final volume of hazardous waste, or 180 days after the closure plan has been approved, whichever is later. Extensions may be approved upon demonstration of need. These timeframes are designed to prevent closures from dragging on for indefinite periods. The Agency is concerned that if closure is not addressed in a timely manner, there is an increased likelihood of releases from the unit into the environment, and that the financial situation of the facility may deteriorate such that it will be unable to complete closure activities on its own.

On the other hand, the Agency has found that the 180-day time period has been insufficient for a majority of closed and closing RCRA facilities. Activities required to complete closure (e.g. securing contracts, developing plans and specifications, bidding and construction) have proven to be more time consuming and complicated than originally anticipated. As noted above, the size and scope of the closure activities are important variables that may significantly affect time required to achieve final closure. Appropriate timeframes may also vary widely based on the type of remedies pursued. Bioremediation or waste fixation, for example, may constitute effective, albeit longer-term means of meeting closure performance standards. Another important consideration that frequently warrants extension of the closure period is the need to schedule closure activities to correspond with required corrective action.

Extensions may be granted if the owner or operator can demonstrate need in accordance with existing provisions. EPA is concerned, however, that extensions may have become the rule rather than the exception. Based on these concerns, EPA is considering revision of the 180-day closure completion period. Given the site-specific nature of time needed to complete closure, EPA is considering proposing that time periods for completing closure be developed on a facility specific basis through the closure plan process. Another alternative would be to establish a longer more appropriate mandatory time period for completing closure.

Under any alternative, EPA believes it is appropriate to retain the existing provision that, in instances where closure will take longer than 180 days, the owner or operator must certify that he has taken and will continue to take all steps to prevent threats to human health and the environment.

EPA solicits comments on whether the 180-day closure completion period should be revised and, if so, how it should be amended to provide necessary flexibility while ensuring effective and timely closures.

B. Regulatory Distinction Between Regulated Units Undergoing Corrective Action and Non-Regulated Solid Waste Management Units

The universe of closed and closing regulated land disposal units includes a number of units that have released hazardous wastes and constituents into soils and groundwater surrounding the unit. In terms of the environmental risk associated with these regulated units, and the activities necessary to address that risk, these units are indistinguishable from non-regulated solid waste management units. In many cases, particularly in the case of unlined land-based units, closure of the regulated unit will involve many of the same activities as do corrective actions conducted under the authority of § 264.101 or RCRA section 3008(h). However, in the case of regulated units, the regulations of parts 264 and 265 governing groundwater monitoring, closure and post-closure care, and financial assurance continue to apply during cleanup.

The Agency is concerned that this dual regulatory scheme often limits the Agency's ability to determine the best remedy at regulated units. The Agency believes that there are many situations where allowing the Regional Administrator to make a site-specific determination, rather than strictly applying the full range of parts 264 and 265 requirements, would better serve the goal of expedited closure of the unit.

Consider, for example, the situation where EPA or an authorized State addresses, through its corrective action authorities, a collection of adjacent units releasing hazardous constituents to the environment. If one of those units were a regulated unit, while the others were non-regulated solid waste management units, two regulatory regimes would arguably apply. Under the current regulatory structure, EPA might select remedies for the solid waste management units through the proposed 40 CFR subpart S process, while the regulated unit would remain subject to part 264 and part 265 closure and groundwater monitoring requirements. Thus, in one case groundwater cleanup levels would be selected through a balancing process comparable to Superfund's, while for the regulated unit, the owner or operator might be required to clean the site up to background, or seek an Alternative Concentration Limit under § 264.94. In this case, EPA does not believe retaining a dual regulatory structure serves the goal of expedited cleanups. Rather, it believes that the corrective action process, which was specifically designed for remedial activities, would be more appropriate to address the closed regulated units.

In other cases, the regulations might prevent the owner or operator from closing the unit in a manner that meets the closure performance standard of §§ 264.111 and 265.111. For example, where waste has been removed from a unit but contaminated soils remain, the remedy that might best prevent future releases from the unit could include installation of an infiltration system and flushing of soils over time to remove remaining contamination. However, the requirement of §§ 264.310 and 265.310 that the unit be covered with an impermeable RCRA cap would arguably rule out or significantly complicate the remedy, because soils could not be flushed beneath a cap, and the contaminated soils would remain untreated.

The Agency is considering amendments to the requirements of parts 264 and 265 that would reduce or

eliminate the regulatory distinction between closed or closing regulated units that require corrective action and other solid waste management units. EPA, therefore, solicits comment on whether to allow the Regional Administrator to establish groundwater monitoring, closure and post-closure care, and financial assurance requirements on a site-specific basis at regulated units addressed through the corrective action process. Under this approach, the Regional Administrator would look to the corrective action process, rather than the unit-specific technical standards designed for regulated units, to determine remedial objectives and standards. This would allow EPA to develop, through the corrective action process, a consistent overall remedy, tailored to the specifics of the situation.

The Agency specifically solicits the following information:

(1) Situations where it is important to retain the regulatory distinction between regulated units undergoing corrective action and other solid waste management units,

(2) Specific requirements applicable to regulated units that should be retained (if any),

(3) Situations where it is important to eliminate the distinction between regulated units undergoing corrective action and other solid waste management units, and

(4) Specific requirements applicable to regulated units that impede cleanup at those units.

IV. Proposed Provisions Related to State Enforcement Authority to Compel Corrective Action at Interim Status Facilities

A. Background Information

The HSWA amendments of 1984 substantially expanded corrective action authorities for both permitted RCRA facilities and facilities operating under interim status. Section 3004(u) requires that any hazardous waste management permit issued after November 8, 1984, address corrective action for releases of hazardous waste or hazardous constituents from any solid waste management unit (SWMU) at the facility. Section 3004(v) extends corrective action authority to cover releases migrating off-site. Section 3008(h) provides EPA with enforcement authority to require corrective action at interim status facilities. Sections 3004 (u) and (v) became immediately effective in all States and are administered by EPA until States become authorized for HSWA corrective action (*see* section VI of this preamble for further discussion). Section 3008(h) also became effective immediately.

On July 15, 1985, and December 1, 1987, the Agency codified in § 264.101 the requirements of sections 3004 (u) and (v) for addressing corrective action at permitted facilities (*see* 50 FR 28747 and 52 FR 45788). As a result, States wishing to obtain or retain authorization to implement subtitle C hazardous waste management programs must adopt permitting authorities that are at least as stringent as the provisions in § 264.101.

Prior to today's rule, however, the Agency had not proposed that States adopt as part of an adequate enforcement program, the authority to issue enforcement orders to compel corrective action at interim status facilities (section 3008(h) authority). While many States may have authorities comparable to section 3008(h), they have not been reviewed by the Agency through the State authorization process. EPA is proposing today to require States to adopt such authority. As with all other EPA enforcement authorities, EPA will maintain it's authority to implement section 3008(h).

B. Summary of Proposed Provisions

The Agency, through today's proposal, would require States to adopt, as part of an adequate enforcement program, the authority to issue enforcement orders to compel corrective action at interim status facilities. States will now need to be authorized for both corrective action at permitted facilities under authorities comparable to sections 3004 (u) and (v) and at interim status facilities under an authority comparable to section 3008(h). States may choose to enhance their enforcement program by adopting an authority comparable to section 3008(h) prior to authorization for corrective action at permitted facilities. For example, a State with a cleanup authority that can address interim status facilities could include such authority as part of its adequate enforcement program, even if it did not yet have authority to address corrective action at permitted facilities.

The Agency would require that the State interim status enforcement authorities be comparable in scope to section 3008(h) authority. Section III.C. of this preamble describes conditions that a State enforcement authority would have to meet to be considered comparable to section 3008(h) authority.

C. Analysis and Discussion

The RCRA regulations at § 271.16 specify the requirements for enforcement authorities that States must meet in order to gain and maintain authorization to administer the RCRA program. The Agency is proposing to amend the requirements for enforcement authorities at § 271.16 to require States to have authority to compel corrective action at interim status facilities.

The Agency believes that requiring States to adopt such authority will enhance the State's role as the primary implementing authority for the RCRA Subtitle C program. Furthermore, today's proposal will ensure that States have the full range of RCRA clean up authority granted EPA by Congress, and, therefore, will promote a more complete and consistent delegation of the corrective action program to the States. As currently practiced, delegation of the corrective action program to address permitted facilities, but not interim status facilities, causes confusion in the regulated community and makes it more difficult for the States to establish priorities and manage resources efficiently. Furthermore, redundant or inconsistent regulation may result. Today's proposal enhances the State's ability to take the lead for RCRA cleanup activities at all RCRA treatment, storage, and disposal facilities—interim status as well as permitted. Furthermore, EPA believes that this will promote consistency between corrective actions compelled by the Federal and State corrective action programs. The proposed regulations will ensure that equivalent corrective action activities are implemented at interim status facilities, regardless of whether the action is initiated by EPA or a State.

The Agency believes that most States, especially those authorized for corrective action under sections 3004 (u) and (v), may already have the type of enforcement authority that would be required by today's proposal. EPA specifically requests comment from States as to whether the Agency is correct in this assumption. In addition, the Agency requests comment regarding the difficulty of obtaining such an enforcement authority in States where it does not already exist.

Requiring States to obtain the ability to issue interim status corrective action orders also complements today's proposal to allow alternative mechanisms (i.e., orders) to replace post-closure permits. Today's proposal ensures that all States have authority to address both corrective action and post-closure care at interim status facilities.

The Agency will retain its ability to issue section 3008(h) orders. The Agency believes that in many cases, it will be more efficient to continue to implement section 3008(h) orders

already in place, even if the facility is located in a State which has adopted a corrective action order authority as part of their adequate enforcement program. Issuance of a State corrective action order to an interim status facility would not preclude subsequent corrective action requirements pursuant to sections 3004 (u) and (v). Although EPA would retain the authority to issue section 3008(h) orders to interim status facilities, the Agency anticipates that such actions would be filed in States authorized for interim status corrective action authority only after careful consideration and only in cases that meet any of the following criteria:

(1) The State fails to take timely and appropriate action;

(2) The State's action is clearly inadequate; or

(3) Cases that are of national significance. Of course, the Agency will consider using its section 3008(h) authority to compel corrective action if requested by a State.

The Agency does not intend to duplicate past efforts conducted as part of the State authorization process for HSWA corrective action through this rulemaking. Where appropriate, the Agency will review previously submitted State corrective action authorization packages for permitted facilities to evaluate a State's interim status corrective action order authority. However, it may be necessary for States to augment previous authorization packages with supplemental information to enable the Agency to evaluate fully such order authorities.

Under this proposed rule, States that have not yet been authorized for corrective action at permitted facilities could apply for authorization for corrective action authority at interim status facilities. In such a case, EPA would require the State to develop a Memorandum of Agreement (MOA) with EPA to provide the Agency the opportunity to comment on draft orders prior to issuance. Prior to today's proposal, EPA has not established a right to comment on draft orders. However, in the case where States are not yet authorized for corrective action at permitted facilities, the Agency believes that it would be important to have such opportunity to ensure consistent implementation of the RCRA corrective action program. To accommodate variations in State procedural rules, EPA would allow these States and the Regions to decide exactly how and when EPA would submit comments on State orders in the State/EPA MOA.

D. EPA's Interpretation of the Scope of Section 3008(h)

The Agency uses section 3008(h) authority to address releases at interim status facilities authorized to operate under section 3005(e) of RCRA. In a December 16, 1985, memorandum from J. Winston Porter, then Assistant Administrator of the Office of Solid Waste and Emergency Response, *"Interpretation of Section 3008(h) of the Solid Waste Disposal Act,"* EPA interpreted section 3008(h) to enable the Agency to respond to releases of hazardous waste or hazardous constituents at facilities that have, had, or should have had authorization to operate under interim status by taking either judicial or administrative action. States must demonstrate that their authority can address an equally broad universe of facilities, through either judicial or administrative action, and that their order authorities, at a minimum, meet the criteria discussed below.[2]

1. Definition of Facility

In a recent rule, (Corrective Action Management Units and Temporary Units (58 FR 8658, February 16, 1993)), EPA defined "facility" for corrective action purposes as "all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA." The Agency interprets "facility" to have the same meaning under section 3008(h). EPA is proposing that States must demonstrate that their cleanup order authorities contain a definition of "facility" that is at least as broad as that available under section 3008(h) or that the State authority otherwise has a scope as broad as section 3008(h).

2. Definition of Release

While the statute does not define the term "release," the Agency has interpreted the term to be at least as broad as the definition of release under CERCLA section 101 (22). The Agency considers a release to be any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The legislative history (***) also makes it clear that the term release is not limited to releases to ground water. Therefore, the Agency uses section 3008(h) to address releases of hazardous waste or hazardous constituents[3] from a facility. EPA is proposing that States demonstrate that their corrective action order authorities include a definition of release that is as broad as that being used by EPA under section 3008(h), or otherwise has the authority to address all "releases" as defined under that section.

3. Off-Site Releases

EPA interprets section 3008(h) to include the responsibility to address corrective action beyond the facility boundaries as set out in section 3004(v). Section 3004(v) requires owners and operators to take corrective action beyond the facility boundary where such action is necessary to protect human health and the environment unless the owner or operator of the facility demonstrates that, despite best efforts, it is unable to obtain the necessary permission to undertake such action. EPA proposes to require States to be able to impose similarly stringent requirements.

4. Compelling Compliance

In cases of failure to comply with an order issued under section 3008(h) of RCRA, EPA may assess a civil penalty of up to $25,000 for each day of non-compliance. Section 3008(h) also allows EPA to commence a civil action for appropriate relief including a temporary or permanent injunction, or a suspension or revocation of a facility's authority to operate under interim status.

Before States enforcement programs can be deemed adequate under today's proposal (i.e., authority to address corrective action at interim status facilities), they must have the ability, either judicial or administrative, to assess and collect civil penalties. Current requirements for adequate enforcement programs found in §§ 271.15 and 271.16, require States to have administrative or judicial authority to assess penalties up to $10,000 per day. Although section 3008(h) enables the Agency to assess penalties up to $25,000 per day, at this time, EPA is not proposing to require States programs to meet the penalty amounts currently specified in section 3008(h). However, the Agency is seeking comment on whether §§ 271.15 and 271.16 should be amended to require States to demonstrate that their penalty authority is consistent with EPA's (the ability to collect penalties of up to $25,000 per

[2] The Agency's interpretation of the corrective action authorities under section 3008(h) and sections 3004 (u) and (v) are virtually identical. Therefore, criteria discussed in this section related to the Agency's interpretation of section 3008(h) are applicable to the discussion of sections 3004 (u) and (v) in section IV of this preamble, unless otherwise noted.

[3] Hazardous constituents are the substances listed in 40 CFR, Part 261, Appendix 8.

day for non-compliance with RCRA and/or its regulations).

In addition, EPA will accept any State authority as part of their adequate enforcement program that allows assessment and collection of penalties for non-compliance with a cleanup order. States must be able to apply such penalty authority to facilities subject to interim status requirements under Subtitle C.

Today's proposal would also require States to demonstrate that they have the ability to suspend or revoke a facility's authority to operate under interim status and commence a civil action for appropriate relief, including a temporary or permanent injunction under the cleanup order authority or under a separate authority that can be applied to interim status facilities.

5. Application of Order Authority

EPA believes that State enforcement programs will be enhanced by requiring that such programs have the authority to use orders to address corrective action at interim status facilities. To provide States flexibility to satisfy this newly proposed requirement for authorization, EPA would allow States to request authorization for any State law or enforcement authority that meets the minimum requirements of section 3008(h) as discussed earlier in this section of the preamble.

Furthermore, the Agency has found that in some States, those agencies responsible for the RCRA program may not be responsible for enforcing RCRA order requirements. For example, the State's interim status corrective action orders might only be enforceable through the State Attorney General's Office. In this case, a Memorandum of Agreement (MOA) would be required between the two State agencies to allocate responsibilities for any necessary enforcement. Such MOA must be available for Agency review.

In order to facilitate authorization of State enforcement programs, the Agency requests comment on whether or not it would be appropriate to provide interim authorization for the corrective action order authority as proposed in today's rule.

V. Request for Comment on Authorizing States to Use State Orders to Impose Corrective Action at Permitted Facilities

In the course of authorizing States for sections 3004 (u) and (v) authority, the Agency has recognized that some States would like to compel corrective action at permitted facilities (all TSD facilities) through a State order, in lieu of writing specific permit conditions to implement section 3004 (u) and (v). For example, a State that has years of experience implementing a broad and powerful cleanup order authority may prefer to rely on this authority rather than imposing corrective action through permits; or a State that is already requiring facility-wide cleanup through an order issued under a State statute may find that at the time of permit issuance, no additional permit requirements are necessary.

To ensure that such cleanup orders meet the requirements of sections 3004(u) and (v), EPA would require States to assess the completed cleanup conducted under an order against the requirements of sections 3004(u) and (v). In addition, such orders must be incorporated by reference in the permit, which means the State's normal permit appeal procedures apply to the provisions of the order. Finally, the permit would need to include "reopener" language to ensure that if the requirements of sections 3004(u) and (v) were not met, the State would have the opportunity to modify the permit to require any additional work.

EPA is seeking comment on whether this concept (i.e., using orders in lieu of section 3004(u) and (v) permit conditions) should be made available to the States as an option for implementing corrective action, and whether it would be useful to facilitate cleanups and provide flexibility to States seeking authorization for corrective action. If this concept were eventually adopted, States wishing to use cleanup order authority as the principal vehicle for corrective action at permitted facilities would have to demonstrate to EPA that the order authority is at least as broad as the requirements of sections 3004(u) and (v). The specific requirements for section 3004(u) and (v) can be found under the similar discussion of section 3008(h) requirements found in section IV. of this preamble. Please note, however, that the Agency is not expanding its interpretation of section 3008(h) authority to include permitted facilities. Rather, the Agency believes that some States may have very broad authorities that can address both interim status and permitted facilities.

VI. Public Participation

It is the Agency's policy to provide a meaningful opportunity for members of the public to be informed of, and participate in, decisions that affect them and their communities. This policy applies to corrective action conducted under both orders and permits.

In this notice, the Agency is proposing to:

(1) Allow the use of orders in lieu of post-closure permits, and

(2) Require States to adopt authority, as part of their authorized programs, to address corrective action at interim status facilities. Furthermore, the Agency has asked for comment on allowing States to address corrective action through order authorities in lieu of sections 3004(u) and (v) at permitted facilities. The Agency would involve the public in each of these scenarios through the following procedures.

A. Public Participation Requirements When Issuing a Section 3008(h) Order in Lieu of a Post-Closure Permit

Under today's proposal, all orders issued in lieu of post-closure permit conditions, in conformance with proposed § 270.1(c)(7), must follow the public participation procedures of 40 CFR part 121, which are discussed in section V.A.2.c. of this preamble.

B. Public Participation Requirements for State Corrective Action Orders at Interim Status Facilities

Today's proposal would require States to obtain the ability to address corrective action at interim status facilities with an order authority. Current Agency policy strongly encourages that the opportunity for public participation be provided prior to final remedy selection.[4] Therefore, States seeking authorization for 3008(h) order authority must have a rule or a policy for public participation that is consistent with EPA's current policy.

At this time, the Agency is also asking for comment on whether it would be appropriate to mandate the use of public participation through regulation (specifically the public participation regulations proposed under today's rule at section V A.2.c. (40 CFR part 121)), for all orders addressing RCRA corrective action at interim status facilities.

C. Public Participation Requirements for Orders Used to Address Corrective Action at Permitted Facilities in Lieu of Sections 3004(u) and (v)

The Agency is asking for comment on whether it would be appropriate to allow State corrective action order authorities to address corrective action at permitted facilities in lieu of sections 3004(u) and (v). States seeking to be authorized for such authority would have to demonstrate that their cleanup order authority provides for public participation prior to final remedy

[4] This policy reflects section 7004(b) of RCRA, which requires EPA to provide for and encourage public participation in RCRA actions, including enforcement.

selection. The Agency solicits comment on whether it should require that those public participation requirements be equivalent to the requirements of parts 124 and 270, or whether it should approve the use of alternative procedures.

VII. Effect of Today's Proposed Rule on State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (*See* 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains the enforcement authorities of sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in unauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including issuance of permits, until the State is granted authorization to do so. While States must still adopt more stringent HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect of Today's Proposed Revisions to Closure and Post-Closure Requirements on State Authorizations

This rule proposes revisions to the post-closure requirements under HSWA and non-HSWA authorities. The proposed requirements in §§ 265.110, 265.121 (except for paragraph 265.121(a)(2)), 270.1, and 270.27 are proposed under non-HSWA authority. Thus, those requirements would become immediately effective only in States that do not have final authorization, and would not be applicable in authorized States unless and until the State revises its program to adopt equivalent requirements. Section 265.121(a)(2) is proposed under HSWA authority. Thus, that section would become immediately effective in all States.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are not more stringent or reduce the scope of the Federal program, States are not required to modify their programs (*See* 40 CFR 271.1(i)).

The provisions of today's rule related to post-closure permit requirements are not more stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent to the provisions contained in today's proposed rule. If the State does modify its program, EPA must approve the modification for the State requirements to become subtitle C RCRA requirements.

C. Effect of Today's Proposed Revisions to Requirements for Enforcement Authority on State Authorizations

1. Requirement to Adopt Provisions of Today's Proposal

The provisions of today's rule requiring States to adopt enforcement authorities comparable to section 3008(h) are more stringent than the current Federal program. Therefore, States wishing to seek or retain authorization would be required to adopt those provisions.

2. Effect of Proposed Rule on Federal Enforcement Authorities in States that Obtain Authorization for Today's Proposed Provisions

Since 1980, EPA has required States to adopt civil and criminal enforcement authorities to enforce violations of authorized State statutes and regulations. EPA's authority to use its own enforcement authorities, however, does not terminate when it authorizes a State's enforcement program.

Section 3008(a) allows EPA to enforce any "requirement" of subtitle C. This provision allows EPA to bring administrative and/or judicial enforcement actions to enforce subtitle C requirements even in States authorized to implement subtitle C programs in lieu of the federal program. (Section 3008(a)(2) clearly reflects this authority.) EPA has always used this authority sparingly because it believes States should take the lead role in enforcing their authorized programs. Nevertheless, EPA's continuing enforcement authority can be an essential tool in ensuring that the regulated community meets its obligations to manage hazardous waste in a manner that provides adequate protection for human health and the environment. For the same reasons, EPA will retain its authority to issue corrective action orders to interim status facilities under section 3008(h).

VIII. Regulatory Impact Analysis

A. Executive Order 12866

Under Executive Order 12866, which was published in the **Federal Register** on October 4, 1993 (*see* 58 FR 51735), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record for this rulemaking (*see* Docket # F–94–PCPP–FFFFF).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* at the time the Agency publishes a proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have significant economic impact on a substantial number of small entities. The provisions of today's rule would expand the options available to address post-closure care so that a permit would not be required in every case, would impose no requirements on owners and operators in addition to those already in effect—nor would the provisions of this proposal that would require States to adopt, as part of an adequate enforcement program, authority to compel corrective action at interim status facilities. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The recordkeeping and reporting requirements of this proposed rule would replace similar requirements already promulgated. Thus, this rule imposes no net increase in recordkeeping and reporting requirements. As a result, the reporting, notification, or recordkeeping (information) provisions of this rule do not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: October 25, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.90 is amended by adding a new paragraph (e) to read as follows:

§ 264.90 Applicability.

* * * * *

(e) The regulations of this subpart apply to all owners and operators subject to the requirements of § 270.1(c)(7) of this chapter to obtain either a post-closure permit or equivalent mechanism. Where these facilities are addressed through mechanisms other than a permit, references to "in the permit" in this subpart mean in whatever mechanism the Agency uses to implement the post-closure requirements. In the case of unpermitted facilities that are required by § 265.121 of this chapter to comply with the requirements of this section, any necessary corrective action will be specified in the enforcement order or other enforceable document issued by the Agency in lieu of a post-closure permit.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

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

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

2. Section 265.110 is amended by adding a new paragraph (c) to read as follows:

§ 265.110 Applicability.

* * * * *

(c) Section 265.121 applies to owners and operators of units that are subject to the requirements of § 270.1(c)(7) of this chapter and do not obtain a post-closure permit for the unit.

3. A new § 265.121 is added to subpart G to read as follows:

§ 265.121 Additional post-closure requirements.

(a) The Agency will impose the following additional requirements on owners or operators that do not obtain a post-closure permit but are subject to post-closure care requirements:

(1) The requirements of §§ 264.90–264.100 of this chapter;

(2) Facility-wide corrective action, consistent with § 264.101 of this chapter;

(3) The information submission requirements of § 270.27 of this chapter;

(b) The Regional Administrator must either:

(1) Provide opportunity for public participation, at the point of remedy selection if corrective action is required at the facility, or upon making a determination that corrective action is not needed, that includes the following:

(i) Publication of a notice of availability and a brief analysis of the proposed remedy, or notice of the determination that corrective action is not needed, in a major local newspaper of general circulation;

(ii) A reasonable opportunity, not less than 30 calendar days, for public comment and, upon timely request, extend the public comment for a period by a minimum of 30 additional days;

(iii) Opportunity for a public meeting to be held during the public comment period at a location convenient to the population center nearest the site at issue;

(iv) A tape or written transcript of the public meeting available to the public;

(v) A written summary of significant comments and information submitted during the public comment period and the EPA or State response to each issue available to the public;

(vi) In the written summary required in paragraph (b)(1)(v) of this section, a discussion of significant changes in documentation supporting the final remedy selected or a request for additional comment on a revised remedy selection if, after publication of the proposed remedy and prior to the adoption of the selected remedy, the remedy is changed such that it significantly differs from the original proposal with respect to scope, performance, or cost as a result of new information; or

(2) If the Regional Administrator determines that even a short delay in the implementation of the remedy would adversely affect human health or the environment, the Regional Administrator may comply with the requirements of paragraph (b)(1) of this section after initiation of the remedy. These requirements must be met before the Regional Administrator may consider the facility addressed under § 270.1(c)(7) of this chapter.

(c) If the activities required of the owner or operator by this section were initiated or conducted prior to [effective date of the final rule], the Regional Administrator may make a determination that the requirements of paragraphs (a) (1), (2), and (3) of this section have been met. Upon making that determination, the Regional Administrator must, before considering the facility to be fully addressed under § 270.1(c)(7)(ii) of this chapter, provide the public notice of that determination in accordance with the procedures outlined in paragraph (b)(1) of this section.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by revising paragraph (c) introductory text and adding a new paragraph (c)(7) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) *Scope of the RCRA permit requirement.* RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in part 261 of this chapter.

The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in § 270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure (according to § 265.115 of this chapter) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under § 270.1(c) (5) and (6), or they comply with the alternative post-closure requirements of § 270.1(c)(7)(i)(B). If a post-closure permit is required, the permit must address applicable part 264 Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements of this chapter. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

* * * * *

(7) *Post-closure care permits.* (i) Unless they demonstrate closure by removal or decontamination as provided by § 270.1 (c)(5) and (c)(6), owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to § 265.115 of this chapter) after January 26, 1983, must comply with either of the following requirements, as determined by the Regional Administrator:

(A) Obtain a post-closure permit in accordance with § 270.1(c); or

(B) Obtain an enforceable order or other enforceable document (or combination thereof), or be subject to a CERCLA response action or state response action imposing the conditions specified in § 265.121 of this chapter.

(ii) The Regional Administrator must assure that post-closure needs at facilities subject to the requirements of this paragraph (c)(7) are addressed under either paragraph (c)(7)(i)(A) or (c)(7)(i)(B) of this section.

4. Section 270.14 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 270.14 Contents of part B: General requirements.

(a) * * * For post-closure permits, only the information specified in § 270.27 is required in Part B of the permit application.

* * * * *

5. A new § 270.27 is added to subpart B to read as follows:

§ 270.27 Part B information requirements for post-closure permits.

For post-closure permits, the owner or operator is required to submit only the information specified in §§ 270.14(b) (1), (4), (5), (6), (11), (13), (14), (16), (18) and (19), 270.14(c), and 270.14(d), unless the Regional Administrator determines that additional information from §§ 270.14, 270.16, 270.17, 270.18, 270.20, or 270.21 is necessary.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), and 6926.

2. Section 271.16 is amended by adding a new paragraph (e) to read as follows:

§ 271.16 Requirements for enforcement authority.

* * * * *

(e) Any State administering a program shall have available judicial or administrative action to respond to releases of hazardous waste or hazardous constituents at interim status facilities as provided by section 3008(h).

[FR Doc. 94–27300 Filed 11–7–94; 8:45 am]
BILLING CODE 6560–50–P

federal register

Tuesday
November 8, 1994

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on December 1–2, 1994. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on December 1, 1994, at approximately 9 a.m., and will recess at approximately 6 p.m. The meeting will reconvene on December 2, 1994, at approximately 8:30 a.m. and will adjourn at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, National Institutes of Health, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: October 26, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27574 Filed 11–7–94; 8:45 am]

BILLING CODE 4141–01–P–M

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee at its meeting on December 1–2, 1994. After consideration of these proposals and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by November 22, 1994, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its December 1–2, 1994, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone 301–496–9839, FAX to 301–496–9839.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the *NIH Guidelines for Research Involving Recombinant DNA Molecules:*

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Venook and Warren

In a letter dated October 3, 1994, Drs. Alan Venook and Robert Warren of the University of California, San Francisco, San Francisco, California, submitted a human gene transfer protocol entitled: *Gene Therapy of Primary and Metastatic Malignant Tumors of the Liver Using ACN53 Via Hepatic Artery Infusion: A Phase I Study* to the Recombinant DNA Advisory Committee for formal review and approval.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Gluckman

In a letter dated October 6, 1994, Dr. Jack Gluckman of the University of Cincinnati Medical Center, Cincinnati, Ohio, submitted a human gene transfer protocol entitled: *Intratumoral Injection of Herpes Simplex Thymidine Kinase Vector Producer Cells (PA317/G1Tk1SvNa.7) and Intravenous Ganciclovir for the Treatment of Locally Recurrent or Persistent Head and Neck Cancer* to the Recombinant DNA Advisory Committee for formal review and approval.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Hersh, et. al.

In a letter dated September 16, 1994, Drs. Evan Hersh, Emmanuel Akporiaye, David Harris, Alison Stopeck, Evan Unger, James Warneke, of the Arizona Cancer Center, Tucson, Arizona, submitted a human gene transfer protocol entitled: *Phase I Trial of Interleukin-2 Plasmid DNA/DMRIE/DOPE Lipid Complex as an Immunotherapeutic Agent in Solid Malignant Tumors or Lymphomas by Direct Gene Transfer* to the Recombinant DNA Advisory Committee for formal review and approval.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Grossman and Woo

In a letter dated September 27, 1994, Drs. Robert Grossman and Savio Woo of the Baylor College of Medicine & Methodist Hospital, Houston, Texas, submitted a human gene transfer protocol entitled: *Phase I Study of Adenoviral Vector Delivery of the HSV-TK Gene and the Intravenous Administration of Ganciclovir in Adults with Malignant Tumor of the Central Nervous System* to the Recombinant DNA Advisory Committee for formal review and approval.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Clayman

In a letter dated October 5, 1994, Dr. Gary Clayman of the MD Anderson Cancer Center, Houston, Texas, submitted a human gene transfer protocol entitled: *Clinical Protocol for Modification of Tumor Suppressor Gene Expression in Head and Neck Squamous Cell Carcinoma (HNSCC) with an Adenovirus Vector Expressing Wild-type p53* to the Recombinant DNA Advisory Committee for formal review and approval.

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Dorkin and Lapey

In a letter dated October 11, 1994, Dr. Henry Dorkin of the New England Medical Center, Boston, Massachusetts, and Dr. Allen Lapey of Massachusetts General Hospital, Harvard Medical School, Boston, Massachusetts, submitted a human gene therapy protocol entitled: *Adenovirus Mediated Gene Transfer for Cystic Fibrosis: Safety of Single Administration in the Lung* to the Recombinant DNA Advisory Committee for formal review and approval.

VII. Report on Minor Modifications to NIH-Approved Human Gene Transfer Protocols

Dr. LeRoy Walters, Chair of the Recombinant DNA Advisory Committee, will present an update on minor modifications to NIH-approved human gene transfer protocols.

VIII. Working Group on Data Management

Dr. Brian Smith, Chair of the Working Group on Data Management, will provide a summary of the reports submitted to the Office of Recombinant DNA Activities by the principal investigators of NIH-approved protocols, and make recommendations regarding actions to be taken in the event of non-reporting.

IX. Amendments to Appendix B of the NIH Guidelines Regarding Updating the Classification of Microorganisms/ Fleming

In a letter dated June 24, 1993, Dr. Diane Fleming, President of the Mid-Atlantic Biological Safety Association requested updating Appendix B, *Classification of Microorganisms on the Basis of Hazard*. The Mid-Atlantic Biological Safety Association submitted an updated list of the classification of microorganisms for the Committee to review which included the latest taxonomy and agent risk group classifications as defined by the Centers for Disease Control and Prevention. This request was published for public comment in the **Federal Register** (August 18, 1994, 58 FR 44098).

During the September 9–10, 1993, meeting, the Recombinant DNA Advisory Committee recommended by consensus that the current classification of etiological agents described in the *Biosafety in Microbiological and Biomedical Laboratories*, 3rd edition, May 1993, U.S. Department of Health and Human Services, should be endorsed by the Committee. The Committee retains the option to adopt any modification to the CDC listing. The Committee recommended that the revised Appendix B, *Classification of Microorganisms on the Basis of Hazard*, submitted by Dr. Fleming should not be adopted until the Committee receives letters of concurrence from both the Centers for Disease Control and Prevention and the NIH Division of Safety.

In a telephone call on October 20, 1994, Dr. Fleming stated that Appendix B, *Classification of Microorganisms on the Basis of Hazard*, would be reviewed by experts from the Centers for Disease Control and Prevention and the American Society for Microbiology. The revised Appendix B will be submitted to the Committee for the December 1–2, 1994, meeting for review and discussion. If accepted, the revised Appendix B will be published in the **Federal Register** for public comment, and voted on during the March meeting.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: October 31, 1994.

Daryl A. Chamblee,

Acting Deputy Director for Science Policy and Technology Transfer.

[FR Doc. 94–27575 Filed 11–7–94; 8:45 am]

BILLING CODE 4140–01–P

federal register

Tuesday
November 8, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

Notice of Funding Availability for Intermediaries To Administer Preservation Technical Assistance Grants: Limited Reissuance; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–94–3719; FR–3473–N–04]

NOFA for Intermediaries To Administer Preservation Technical Assistance Grants: Limited Reissuance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: The Department previously published a NOFA requesting applications from intermediaries seeking to administer technical assistance grant funds as described in an April 6, 1994, **Federal Register** publication (59 FR 16366). In that NOFA, the Department requested applications from intermediaries to administer funds on a State-by-State basis; it also requested applications from any intermediary interested in administering funds as a national intermediary to cover States for which acceptable State and regional intermediaries had not applied. The selection process for the April 6, 1994, NOFA is complete. However, because no national intermediary was selected and the Department is now aware of intermediaries interested in administering these grant funds in geographic areas not covered by selections under the April 6, 1994, NOFA, the Department is reissuing the NOFA for intermediaries interested in administering funds in those uncovered areas (a copy of that NOFA is included in the application kit). In addition, the Department is establishing a mandatory training program for intermediaries selected under the NOFA.

DATES: The deadline for submission of intermediary applications under the reissued NOFA is 4:30 p.m.(EST) on December 8, 1994.

ADDRESSES: Application kits for intermediaries contain a copy of the NOFA and may be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–685–8470. Completed applications must be physically received in the Preservation Division, Department of Housing and Urban Development, Room 6284, 451 Seventh Street, SW, Washington, DC 20410, by the submission deadline.

FOR FURTHER INFORMATION CONTACT: Kerry Mulholland, Acting Chief, Affordable Housing Branch, Preservation Division, Department of Housing and Urban Development, Room 6164, 451 Seventh Street, NW, Washington, DC 20410; telephone (202) 708–2300. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300. (Except for the "800" number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Purpose and Substantive Description

The funding made available under this NOFA is authorized by section 312 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), in order to provide assistance to resident groups and Community-Based Nonprofit Housing Developers (CBDs) involved in projects proceeding under the provisions of the Emergency Low-Income Housing Preservation Act of 1987 (title II of the Housing and Community Development Act of 1987; Pub. L. 100–242, approved February 5, 1988) (ELIHPA) or the Low Income Housing Preservation and Resident Homeownership Act of 1990 (title VI of the National Affordable Housing Act (NAHA); Pub. L. 101–625, approved November 28, 1990) (LIHPRHA).

On April 6, 1994, the Department published a NOFA requesting applications from intermediaries seeking to administer technical assistance grant funds (59 FR 16366). The requirements of the April 6, 1994, NOFA are incorporated into this reissuance, except for Section II.C, "Allocation and Funding," and Section III.B, "Fees." Both Sections II.C and III.B have been revised to encourage additional intermediary applicants in certain geographic areas to apply for funds. The Department is also adding a training requirement, whereby selected intermediaries will be required to attend an intermediary training session in Washington, D.C.

The April 6, 1994, NOFA has a complete description of the authority and background, eligibility of intermediaries, intermediary responsibilities, and program requirements for technical assistance applicants applying for funds through selected intermediaries (see Appendix A of the April 6 NOFA).

Because the intermediary program is already in place, intermediaries applying for funds under this reissuance will be given only 30 days to submit applications. Likewise, the Department will review and approve applications in 30 days. The following are the States and territories for which the Department is seeking additional intermediaries and the amounts (rounded) that are available in each of those areas:

ALASKA	67,807.00
ARIZONA	524,817.01
ARKANSAS	793,800.05
CARIBBEAN	396,854.21
COLORADO	725,901.42
DELAWARE	67,807.00
FLORIDA	2,480,819.88
GEORGIA	911,316.91
HAWAII	396,854.21
IDAHO	652,779.82
IOWA	509,148.10
KENTUCKY	1,135,904.69
LOUISIANA	778,131.14
MAINE	156,597.52
MISSISSIPPI	224,496.15
MISSOURI (EAST)	156,597.52
MONTANA	164,431.97
NEBRASKA	300,229.24
NEVADA	214,050.20
NEW HAMPSHIRE	156,597.52
NORTH DAKOTA	289,783.29
OKLAHOMA	422,969.07
SOUTH CAROLINA	1,156,796.58
SOUTH DAKOTA	600,550.10
TEXAS	3,253,819.68
UTAH	310,675.18
VIRGIN ISLANDS	33,857.68
WEST VIRGINIA	133,094.14
WYOMING	185,323.86
Total	17,201,811.15

Training

The Department will conduct a two-day training program for intermediaries selected under both this NOFA and the April 6, 1994 NOFA. At least one staff person from each selected intermediary will be required to attend. The Department will reimburse each intermediary for allowable expenses related to attendance by its staff person. The intermediary, at its option, may send an additional staff person; however the Department will not reimburse the intermediary for expenses related to attendance of the additional person.

Accordingly, FR Doc. 94–8065, NOFA for Intermediaries to Administer Preservation Technical Assistance Grants, published on April 6, 1994 (59 FR 16366), is amended as follows:

1. On page 16372, in the second column, the first paragraph of Section II.C, "Allocation and Funding," is amended by adding two new sentences after the third sentence, to read as follows:

C. Allocation and Funding

* * * However, the Department will guarantee sufficient funds for each State to cover Intermediary start-up fees, in accordance with Section III.B ("Fees") of this NOFA. Also, to the extent necessary, the Department may

maintain a reserve of funds to assure the availability of funds in geographic areas where there is the potential for Preservation activity, but no such activity currently exists.

* * * * *

2. On page 16373, in the first column, the first paragraph of Section III.B, "Fees," is revised to read as follows:

B. Fees

Each selected intermediary will receive processing fees. The fees will include a start-up fee. For any intermediary that was selected under the April 6, 1994, NOFA (59 FR 16366) to administer funds and that seeks, under the November 8, 1994, reissuance of the NOFA, to expand its coverage and administer funds in additional States, the start-up fee shall include $15,000, plus an appropriate adjustment for the required training of one staff person, under the April 6 NOFA and an additional $5,000 per State under the November 8, 1994, reissuance of the NOFA. For any intermediary that did not receive funds under the April 6 NOFA and that applies under the November 8, 1994, reissuance of the NOFA to administer funds for one State or an area smaller than one State, the start-up fee shall be $15,000. For any intermediary that did not receive funds under the April 6 NOFA and that applies under the November 8, 1994, reissuance of the NOFA to administer funds in more than one State, the start-up fee will be $15,000 for the first State and $5,000 for each additional State in which the intermediary is selected to administer funds. These fees are based on the intermediary performing the following activities: announcing the availability of grant funds; producing and distributing application kits; accepting, reviewing and approving and/or rejecting grant applications; executing grant agreements; disbursing grant funds; monitoring the grantees' activities under the grant award; monitoring compliance with the grant agreement through the term of the grant; and maintaining documentation of grant activities for the Department's monitoring of the intermediary.

Authority: 42 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Dated: November 2, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–27642 Filed 11–7–94; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday
November 8, 1994

Part VI

The President

Proclamation 6754
National Military Families Recognition Day

Federal Register
Vol. 59, No. 215
Tuesday, November 8, 1994

Presidential Documents

Title 3—

The President

Proclamation 6754 of November 4, 1994

National Military Families Recognition Day, 1994

By the President of the United States of America

A Proclamation

Military families play an integral role in ensuring the effectiveness of America's Armed Forces. Without fanfare, they selflessly provide behind-the-scenes support to service members, their units, and commands worldwide. Their devotion to their loved ones, to the military, and to their country is unfaltering.

Time and again, military families bravely bid farewell as wives and husbands, children and parents depart for missions in far-off, often hostile areas. Committed to preserving freedom and democracy for all of us, these families provide the continuity and stability essential to the well-being of our soldiers, sailors, airmen, Marines, and the members of our Coast Guard, National Guard, and Reserves.

Military families face abrupt separations, moves to foreign soil, and tours in isolated locations away from friends. As they adjust to conditions around the world, they learn to do without many of the conveniences that most Americans view as basics. They quickly and adeptly transform unfamiliar quarters into welcoming homes, forming bonds of friendship with others in the unit, sharing in their hopes, dreams, and aspirations.

Commanders and other Department of Defense leaders have long recognized the paramount importance of families in the retention and readiness of military members. Indeed, America reaps invaluable benefits from the dedication of military families as they support America's mission to promote democracy and to secure peace.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 21, 1994, as "National Military Families Recognition Day." I call upon all Americans to join in honoring military families throughout the world and in recognizing their integral role in supporting the men and women who defend the cause of freedom at home and abroad. I ask Federal, State, and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, 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. 94-27859
Filed 11-7-94; 11:18 am]
Billing code 3195-01-P

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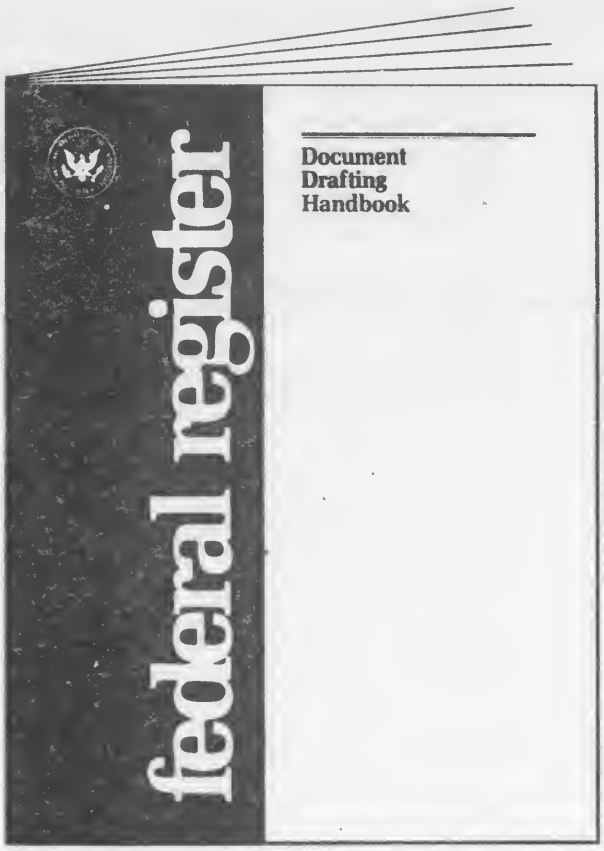

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