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Briefings on How To Use the Federal Register
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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

(TWO BRIEFINGS)

WHEN: October 25 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

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Separate Parts In This Issue

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 59, No. 197
Thursday, October 13, 1994

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–157–2]

Mexican Fruit Fly Regulations, Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations to remove the quarantined portion of Los Angeles County, CA, from the list of areas regulated because of the Mexican fruit fly, and by removing California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California, and that restrictions on the interstate movement of regulated articles from California are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: Interim rule effective October 7, 1994. Consideration will be given only to comments received on or before December 12, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–157–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. Quarantined States are listed in § 301.64(a), and regulated areas are listed in § 301.64–3(c).

In an interim rule effective November 30, 1993, and published in the **Federal Register** on December 6, 1993 (58 FR 64102–64103, Docket No. 93–157–1), we quarantined the State of California and designated a portion of Los Angeles County as a regulated area because that area had been found to be infested with the Mexican fruit fly.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from Los Angeles County, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on November 17, 1993.

Since then no evidence of Mexican fruit fly infestations has been found in this area. We have determined that the Mexican fruit fly no longer exists in Los Angeles County, and we are therefore removing it from the list of areas in § 301.64–3(c) regulated because of the Mexican fruit fly. As a result of this action there is no longer an area in California regulated because of the Mexican fruit fly. Because we have determined that the Mexican fruit fly no longer exists in California, we are removing California from the list in § 301.64(a) of States quarantined because of the Mexican fruit fly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the public. The area in California affected by this document was regulated due to the possibility that the Mexican fruit fly could be spread to noninfested areas of the United States. Since this situation no longer exists, the continued regulated status of this area would impose unnecessary restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register.** After the comment period closes, we will publish another document in the **Federal Register.** It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule removes restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA. Within this regulated area, there are 1,125 small entities that may be affected by this rule. These include 350 distributors/wholesalers, 750 fruit and produce stands, 12 nurseries, 5 growers on a total of 2 acres, 3 swap meets, 2 processors, 2 community gardens, and 1 packer. These 1,125 entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

These small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the

distribution of these articles was not affected by the regulatory provisions we are removing. Many of these entities also handle other items in addition to the previously regulated articles. The effect on those few entities that move regulated articles interstate was minimized by the availability of various treatments, that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost. Therefore, the effect, if any, of this rule on these entities appears to be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.64 [Amended]

2. In § 301.64, paragraph (a) is amended by removing the phrase "States of California and Texas" and by adding the phrase "State of Texas" in its place.

§ 301.64–3 [Amended]

3. In § 301.64–3, paragraph (c) is amended by removing the entry for "California" and the description of the regulated area for Los Angeles County, CA.

Done in Washington, DC, this 7th day of October 1994.

Terry L. Medley.

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–25370 Filed 10–12–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–06–AD; Amendment 39–9044; AD 94–21–01]

Airworthiness Directives; de Havilland Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100 series airplanes, that requires modification of the potentiometer lever stops on the nose wheel steering. This amendment is prompted by a report that the potentiometer stops installed currently on these airplanes are too short to limit excessive uncontrolled potentiometer movement in the event of a mechanical link failure. The actions specified by this AD are intended to prevent the airplane from departing the runway during takeoff or landing in the event of the failure of the mechanical link between the rudder pedals and the potentiometer.

DATES: Effective November 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 14, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bradford Chin, Electronics Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 series airplanes was published in the **Federal Register** on April 7, 1994 (59 FR 16574). That action proposed to require modification of the potentiometer lever stops on the nose wheel steering.

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

The commenter supports the rule.

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

The FAA estimates that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost for required parts will be minimal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,920, or $165 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–21–01 de Havilland, Inc.: Amendment 39–9044. Docket 94–NM–06–AD.

Applicability: Model DHC–8–102, –103, and –106 series airplanes, serial numbers 003 through 334 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from departing the runway during takeoff or landing, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the potentiometer lever stops on the nose wheel steering in accordance with de Havilland Service Bulletin S.B. 8–32–99, Revision 'A,' dated July 26, 1993.

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

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

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

(d) The modification shall be done in accordance with de Havilland Service Bulletin S.B. 8–32–99, Revision 'A,' dated July 26, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 14, 1994.

Issued in Renton, Washington, on October 3, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–24870 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–39–AD; Amendment 39–9041; AD 94–20–12]

Airworthiness Directives; Israel Aircraft Industries (IAI) Model 1125 Westwind Astra Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain IAI Model 1125 Westwind Astra airplanes, that requires relocation of the ground cable in the slat power drive unit. This amendment is prompted by a report that the drive system for the leading edge slat stopped in transit during flight on a Model 1125 Westwind Astra airplane. This incident was caused by an improper ground connection for the electric motor of the slat drive system, which resulted in arcing and an open electrical circuit. The actions specified by this AD are intended to prevent possible fuel vapor fire due to electrical arcing in an area where fuel vapors might be present and the inability to move the slats during flight due to an open electrical circuit.

DATES: Effective November 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 14, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720–9813. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries (IAI) Model 1125 Westwind Astra airplanes was published in the **Federal Register** on May 5, 1994 (59 FR 23174). That action proposed to require relocation of the ground cable in the slat power drive unit.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $53 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,336, or $218 per airplane.

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

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–20–12 Israel Aircraft Industries Limited: Amendment 39–9041. Docket 94–NM–39–AD.

Applicability: Model 1125 Westwind Astra airplanes; serial numbers 004 through 066 inclusive, and 068; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fuel vapor fire due to electrical arcing in an area where fuel vapors might be present and the inability to move the slats during flight due to an open electrical circuit, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, relocate the ground cable in the slat power drive unit in accordance with Astra Jet Service Bulletin SB 1125–27–110, Revision 1, dated February 16, 1994.

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

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

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

(d) The relocation shall be done in accordance with Astra Jet Service Bulletin SB 1125–27–110, Revision 1, dated February 16, 1994, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1–3, 5	1	February 16, 1994.
4	Original ..	January 19, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720–9813. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 14, 1994.

Issued in Renton, Washington, on September 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–24452 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–83; Amendment 39–9036; AD 94–20–08]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires initial and repetitive inspections of installed third and fourth stage low pressure turbine (LPT) blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. This amendment continues to require inspections, and removal, if necessary, of blade sets, but also requires, as a terminating action to the inspections: installation of improved LPT containment hardware, and installation of an improved No. 6 bearing scavenge pump bracket bushing. This amendment is prompted by reports of additional uncontained engine failures since publication of the current AD, and the availability of improved LPT containment hardware. The actions specified by this AD are intended to prevent damage to the aircraft resulting from engine debris following an LPT blade or shaft failure.

DATES: Effective on November 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 14, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: On May 24, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 93–06–05, Amendment 39–8530 (58 FR 31902, June 1, 1993), applicable to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R engines, to require initial and repetitive inspections of the third and fourth stage low pressure turbine (LPT) blade sets for excessively worn blade shroud crossnotches, and the removal of blade sets found with excessively worn blade crossnotches. That AD is not applicable, however, to PW JT8D–1,

–1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R engines that contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW Alert Service Bulletin (ASB) No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039, and either (a) PW honeycomb third stage outer airseal Part Number (P/N) 801931, 802097, 797594, or 798279; or (b) Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or (c) McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or (d) a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039; or (e) a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982.

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–06–05 was published in the **Federal Register** on December 28, 1993 (58 FR 68572). That action proposed to continue to require repetitive inspections of installed third and fourth stage LPT blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. These inspections are not required, however, for PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R engines that contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, and either (a) PW honeycomb third stage outer airseal P/N 801931, 802097, 797594, or 798279; or (b) Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or (c) McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or (d) a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039; or (e) a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982.

That notice of proposed rulemaking (NPRM) also proposed to require, however, for all engines, installation of improved third stage LPT containment hardware at the next access to the third stage LPT air sealing ring, but not later than December 31, 1998; installation of the improved fourth stage LPT containment hardware at the next shop visit, but not later than December 31, 1998; installation of the improved No. 6 bearing scavenge pump bracket bushing at the next shop visit, but not later than December 31, 1998; and modification and remarking with a new identification number third and fourth stage LPT vanes with a reduced platform leading edge dimension at the next shop visit, but not later than December 31, 1998. The installation of improved containment hardware would serve as terminating action for the repetitive inspections.

The actions would be required to be accomplished in accordance with the following service documents: PW ASB No. A5913, Revision 6, dated October 15, 1993, that describes the third and fourth stage LPT blade set inspection procedures and replacement requirements; PW ASB No. A6110, Revision 1, dated October 15, 1993, that describes procedures for installation of improved LPT containment hardware; PW ASB No. A6131, dated August 24, 1993, that describes procedures for installation of an improved No. 6 bearing scavenge pump bracket bushing; and PW SB No. 5748, Revision 5, dated August 3, 1993, that describes procedures for removing material from the inner platform leading edge on third and fourth-stage LPT vane and vane cluster assemblies, and remarking these modified vanes with new identification numbers.

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

The FAA received several comments that state that inspections and modifications are available that address the root cause of shaft fractures and blade failures, whereas the installation of the containment hardware does not, and should therefore not be mandated. The FAA does not concur. Currently available inspections and modifications only protect against known failure modes, whereas the containment hardware will diminish the severity of all failure modes, both known and unknown, by protecting the aircraft from damage due to uncontained engine debris.

The FAA received several comments that state that the FAA should evaluate PW JT8D engine models separately to determine if all models require the proposed actions to be accomplished, or if some models can be exempted from compliance due to differences in design or demonstrated operational safety. The FAA does not concur. Design differences between the various PW JT8D engine models were evaluated and no significant differences, other than low pressure rotor speed in the higher rated engines, were revealed that could impact containment capability. The increased rotor speeds are protected for in the design of the higher rated engines with the addition of a turbine shield, and the historical event data does not indicate that these higher low pressure rotor speeds result in a greater number of uncontained failures.

One commenter states that the FAA's economic analysis does not reflect the true cost of the containment hardware. The FAA does not concur. The intent of the economic analysis is to quantify the total direct cost to operators of the proposed rule. The analysis does, however, account for engines currently equipped with the required parts, and the price for the required parts quoted in the proposed rule is actually an average value that reflects costs for these engines.

One commenter states that the FAA's economic analysis does not account for the increased fuel costs resulting from the added weight of the containment hardware. The economic analysis reflects the direct costs of performing the requirements of the AD. Since the FAA has determined that the AD is required to correct an unsafe condition found in engines of this type design, and, therefore, operators must perform the requirements of the AD in order to ensure the continued airworthiness of the engines they operate, a comparison of the costs of operating the engine with and without the required containment hardware would not be proper.

One commenter states that the definition of shop visit stated in the proposed rule encompasses many types of minor or peripheral maintenance activities where installation of the containment hardware cannot be accomplished, thus causing a forced induction into an overhaul facility. The FAA concurs. The shop visit definition has been revised to address this commenter's concern.

One commenter states that the FAA's economic analysis should account for the costs to implement AD 93–06–05 and other safety concerns since they are directed at reducing the safety concern addressed by the proposed rule. AD 93–06–05 requires LPT blade torque check inspections. The FAA does not concur. The proposed rule maintains the inspection requirements of AD 93–06–05, but only until the installation of the containment hardware, which is ultimately required for all engines in accordance with the compliance schedule. Therefore, the inspections continue only as options, and only the mandated hardware installation is used to compute the direct costs of this AD. Further, since inspections are not

mandated for engines that have containment hardware installed, only the cost of either the inspection or containment hardware applies for any given engine. The containment hardware cost, the higher of the two, was used on the assumption that an operator would install the hardware rather than continue with the optional inspection program.

One commenter states that the modifications required by PW SB No. 5748, LPT vane cluster cut-back, are not applicable to the engine models specified in this AD. This requirement should be eliminated from the AD. The FAA concurs. The modification of the LPT vane clusters in accordance with PW SB No. 5748, is not required for the "non-A" JT8D engine models and therefore has been eliminated from this AD.

One commenter states that PMA 3rd stage outer air seal, Part Number (P/N) M2533, manufactured by McClain International, should be an acceptable alternative installation to the corresponding PW part, P/N 811962. The FAA concurs. Third stage turbine outer air seal, P/N M2533, has been granted FAA PMA approval, and therefore meets all applicable Federal Aviation Regulations and is directly interchangeable with PW P/N 811962. The AD has been revised to specify P/N M2533 as an acceptable installation.

One commenter states that a one-year extension of the compliance end date to December 31, 1999, should be granted. The FAA concurs. A one-year extension of the compliance end date has been granted to adjust for the time required to review the comments to the NPRM and process the Final Rule.

One commenter states that only engines removed for shop visits on or after the AD effective date will be required to comply with the AD, and therefore AD compliance would not be required for engines already undergoing a shop visit as of the AD effective date. The FAA concurs, but no revision of the AD is required because the wording in the proposed rule accounts for this situation.

One commenter states that the compliance requirements should be revised to minimize economic impact due to major engine disassembly. Specifically, modification of the LPT vane cluster assemblies and installation of the No. 6 bearing scavenge pump bracket bushing could entail major engine disassembly depending on the scope of work performed at the next shop visit occurring after the effective date of the AD. The FAA concurs in part. The FAA has determined that the modification of the LPT vane cluster assemblies is not applicable to the engine models specified in this AD, and therefore has eliminated this requirement. However, the compliance requirements for the installation of the No. 6 bearing scavenge pump bracket bushing is still required at the next shop visit to achieve the desired level of safety.

One commenter states that additional costs could be incurred due to lack of availability of the parts required by this AD. The FAA does not concur. The FAA has coordinated this AD closely with PW to ensure the availability of the required parts. In addition, PMA parts are specified in this AD as an acceptable alternative for PW parts.

One commenter states that the –15A/–17A models were the only engine group to have the initial steel duct modification incorporated during manufacture in accordance with PW SB No. 5697. These engines, together with a limited number of retrofitted engines, will be the only ones able to take advantage of the associated industry support program. The FAA has no comment on the extent or application of any support program which may offset some of the costs of the hardware required by this airworthiness directive. While some operators may receive discounts on the cost of the containment hardware, the economic analysis is computed on the assumption that no discount or warranty program is available. Therefore, this comment is beyond the scope of the AD or its economic analysis.

One commenter states that an alternative to the compliance end date of December 31, 1998, should be expressed in hours and cycles, with performance required as whichever occur later, to accommodate low utilization operators. The FAA concurs. The FAA performed a risk analysis to determine the inspection interval requirements and that risk analysis accounted for both high and low utilization operations. However, determining the hourly and cyclic equivalent to the compliance end date specified in the AD, the FAA has determined that the fleet average utilization rate can be applied to low utilization operators. The FAA has added the hourly and cyclic equivalents to the AD.

One commenter states the PW JT8D–17R engines should be exempted from the requirement to install the thicker third stage turbine outer air seal because these engines are already configured with a turbine shield for containment protection. The FAA does not concur. The PW JT8D–17R engines require additional containment protection due to higher rated low pressure rotor speeds on these engine models. Therefore, both the thicker third stage turbine outer air seal and the turbine shield are required for these engine models.

One commenter concurs with the rule as proposed.

In addition, the FAA has determined that inspections of the third and fourth stage LPT blade sets in accordance with the procedures and intervals described in PW ASB No. 5913, Revision 5, dated August 10, 1992; or PW ASB No. 5913, Revision 4, dated February 20, 1992, constitute acceptable alternative methods of compliance for the inspections required by paragraphs (a)(1) and (a)(1)(iii) of this AD.

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

The FAA estimates that 6,000 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take an average of 4 work hours, based on fleet configuration mix, per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $7,235 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $44,730,000.

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

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

Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8530 (58 FR 31902, June 7, 1993) and by adding a new airworthiness directive, Amendment 39–9036, to read as follows:

94–20–08 Pratt & Whitney: Amendment 39–9036. Docket No. 93–ANE–83. Supersedes AD 93–06–05, Amendment 39–8530.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R turbofan engines, installed on but not limited to Boeing 737 and 727 series aircraft, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aircraft resulting from engine debris following a low pressure turbine (LPT) blade or shaft failure, accomplish the following:

(a) For engines that do not contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW Alert Service Bulletin (ASB) No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, and either PW honeycomb third stage outer airseal Part Number (P/N) 801931, 802097, 797594, or 798279; or Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039; or a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982, accomplish the following:

(1) Conduct initial and repetitive inspections on installed third and fourth stage LPT blade sets, and remove and replace with serviceable blade sets, as necessary, in accordance with Part 1 of the Accomplishment Instructions of PW ASB No. A5913, Revision 6, dated October 15, 1993; or PW ASB No. 5913, Revision 5, dated August 10, 1992; or PW ASB No. 5913, Revision 4, dated February 20, 1992, as follows:

(i) Initially inspect the blade shroud crossnotches of the third stage LPT blade set when specified in paragraphs (a)(1)(i)(A) or (a)(1)(i)(B) of this AD, whichever occurs later. Engines that contain a third stage blade set that have third stage turbine blades that were installed per the requirements specified in PW Service Bulletin No. 5331, dated October 27, 1982, do not require the third stage blade set inspection.

(A) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 1,000 cycles or 1,000 hours time in service, whichever occurs first, after the effective date of this AD.

(ii) Initially inspect the blade shroud crossnotches of the fourth stage LPT blade set when specified in paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD, whichever occurs later. Engines that contain fan exhaust inner front duct segment assemblies that were installed per the requirements of PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, do not require the fourth stage blade set inspection.

(A) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–13 of PW JT8D Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–13 of PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 1,000 cycles or 1,000 hours time in service, whichever occurs first, after the effective date of this AD.

(iii) Thereafter, inspect the third and fourth stage LPT blade sets in accordance with the procedures and intervals specified in PW ASB No. A5913, Revision 6, dated October 15, 1993;

(2) At the next shop visit after the effective date of this AD; but not later than December 31, 1999, 8,000 hours time in service after the effective date of this AD, or 7,000 cycles after the effective date of this AD, whichever occurs latest, install the improved inner front fan exhaust duct and associated hardware in accordance with Part A of the Accomplishment Instructions of PW ASB No. A6110, Revision 1, dated October 15, 1993.

(3) At the next access to the third stage turbine air sealing ring after the effective date of this AD, but not later than December 31, 1999, 8,000 hours time in service after the effective date of this AD, or 7,000 cycles after the effective date of this AD, whichever occurs latest, install the improved third stage turbine air sealing ring and associated hardware in accordance with Part B of the Accomplishment Instructions of PW ASB No. A6110, Revision 1, dated October 15, 1993.

Note: Third stage turbine outer air seal, P/N M2533, is an acceptable alternative to PW P/N 811962 for compliance with this paragraph.

(4) At the next shop visit after the effective date of this AD, but not later than December 31, 1999, 8,000 hours time in service after the effective date of this AD, or 7,000 cycles after the effective date of this AD, whichever occurs latest, install the improved No. 6 bearing scavenge pump bracket bushing in accordance with the Accomplishment Instructions of PW ASB No. A6131, dated August 24, 1993.

(5) Accomplishment of the installations required by paragraphs (a)(2), (a)(3), and (a)(4) of this AD constitutes terminating action to the repetitive inspections required by paragraph (a)(1) of this AD.

(b) For engines that do contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, and either PW honeycomb third stage outer airseal P/N 801931, 802097, 797594, or 798279; or Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039; or a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982, perform the installations required by paragraphs (a)(2), (a)(3), and (a)(4) of this AD, at the times specified in those respective paragraphs.

(c) For the purpose of this AD, a shop visit is defined as an engine removal, where engine maintenance entails separation of pairs of major mating engine flanges or the removal of a disk, hub, or spool at a maintenance facility that is capable of compliance with the instructions of this AD, regardless of other planned maintenance, except for field maintenance type activities performed at this maintenance facility in lieu of performing them on-wing or at another peripheral facility.

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

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

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

(f) The installations shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
PW ASB No. A5913	1	6	October 15, 1993.
	2	4	February 20, 1992.
	3–8	6	October 15, 1993.
	9	4	February 20, 1992.
	10	6	October 15, 1993.
	11	4	February 20, 1992.
	12	6	October 15, 1993.
Appendix A	1	6	October 15, 1993.
	2–3	5	August 10, 1992.
	4	2	September 28, 1990.
	5	6	October 15, 1993.
	6	Original	April 2, 1990.
	7	2	September 28, 1990.
	8–14	Original	April 2, 1990.
Total pages: 26.			
PW ASB No. A6110	1	1	October 15, 1993.
	2	Original	March 19, 1993.
	3–59	1	October 15, 1993.
Total pages: 59.			
PW ASB No. A6131	1–13	Original	August 24, 1993.
Total pages: 13.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 14, 1994.

Issued in Burlington, Massachusetts, on September 22, 1994.

Mark C. Fulmer,

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

[FR Doc. 94–24200 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–ANE–72; Amendment 39–9037; AD 94–20–09]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires initial and repetitive inspections of installed third and fourth stage low pressure turbine (LPT) blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. This amendment continues to require inspections, and removal, if necessary, of blade sets, but also requires, as a terminating action to the inspections: installation of improved LPT containment hardware, installation of an improved No. 6 bearing scavenge pump bracket bushing, and modification and remarking with a new identification number third and fourth stage LPT vanes with a reduced platform leading edge dimension. This amendment is prompted by reports of additional uncontained engine failures since publication of the current AD, and the availability of improved LPT containment hardware. The actions specified by this AD are intended to prevent damage to the aircraft resulting from engine debris following an LPT blade or shaft failure.

DATES: Effective November 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 14, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: On May 4, 1992, the Federal Aviation Administration (FAA) issued AD 92–10–05, Amendment 39–8239 (57 FR 23050, June 1, 1992), applicable to Pratt & Whitney (PW) JT8D–15A, –17A, and –17AR engines, to require initial and repetitive inspections of the third and fourth stage low pressure turbine (LPT) blade sets for excessively worn blade shroud crossnotches, and the removal of blade sets found with excessively worn blade crossnotches. That AD is not applicable, however, to PW JT8D–15A, –17A, and –17AR engines that contain the third and fourth stage LPT containment hardware installed in accordance with PW Alert Service Bulletin (ASB) No. 6039, Revision 1, dated February 20, 1992.

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–10–05, Amendment 39–8239 (57 FR 23050, June 1, 1992), was published in the Federal Register on December 28, 1993 (58 FR 68570). That action proposed to continue to require repetitive inspections of installed third and fourth stage LPT blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. These inspections are not required, however, for PW JT8D–15A, –17A, and –17AR engines that contain the third and fourth stage LPT containment hardware installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions.

That notice of proposed rulemaking (NPRM) also proposed to require, however, for all engines, installation of improved third stage LPT containment hardware at the next access to the third stage LPT air sealing ring, but not later than December 31, 1998; installation of

the improved fourth stage LPT containment hardware at the next shop visit, but not later than December 31, 1998; installation of the improved No. 6 bearing scavenge pump bracket bushing at the next shop visit, but not later than December 31, 1998; and modification and remarking with a new identification number third and fourth stage LPT vanes with a reduced platform leading edge dimension at the next shop visit, but not later than December 31, 1998. The installation of improved containment hardware would serve as terminating action for the repetitive inspections.

The actions would be required to be accomplished in accordance with the following service documents: PW ASB No. A5913, Revision 6, dated October 15, 1993, that describes the third and fourth stage LPT blade set inspection procedures and replacement requirements; PW ASB No. A6110, Revision 1, dated October 15, 1993, that describes procedures for installation of improved LPT containment hardware; PW ASB No. A6131, dated August 24, 1993, that describes procedures for installation of an improved No. 6 bearing scavenge pump bracket bushing; and PW SB No. 5748, Revision 5, dated August 3, 1993, that describes modification and remarking with a new identification number third and fourth stage LPT vanes with a reduced platform leading edge dimension.

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

The FAA received several comments that state that inspections and modifications are available that address the root cause of shaft fractures and blade failures, whereas the installation of the containment hardware does not, and should therefore not be mandated. The FAA does not concur. Currently available inspections and modifications only protect against known failure modes, whereas the containment hardware will diminish the severity of all failure modes, both known and unknown, by protecting the aircraft from damage due to uncontained engine debris.

One commenter states that the FAA's economic analysis does not reflect the true cost of the containment hardware. The FAA does not concur. The intent of the economic analysis is to quantify the total direct cost to operators of the proposed rule. The analysis does, however, account for engines currently equipped with the required parts, and the price for the required parts quoted in the proposed rule is actually an average value that reflects costs for these engines.

One commenter states that the FAA's economic analysis does not account for the increased fuel costs resulting from the added weight of the containment hardware. The economic analysis reflects the direct costs of performing the requirements of the AD. Since the FAA has determined that the AD is required to correct an unsafe condition found in engines of this type design, and, therefore, operators must perform the requirements of the AD in order to ensure the continued airworthiness of the engines they operate, a comparison of the costs of operating the engine with and without the required containment hardware would not be proper.

One commenter states that the definition of shop visit stated in the proposed rule encompasses many types of minor or peripheral maintenance activities where installation of the containment hardware cannot be accomplished, thus causing a forced induction into an overhaul facility. The FAA concurs. The shop visit definition has been revised to address this commenter's concern.

One commenter states that adopting separate rules for separate groupings of PW JT8D engine models in Docket Nos. 93–ANE–72 and 93–ANE–83 is not justified since both address the same safety concern. In addition, separating into two separate rules also avoids a major rule classification and thereby reduces the economic impact of each separate action. The FAA does not concur. The FAA issues airworthiness directives based on product type design, not based on a failure mode, the result of a failure mode, or the description of a safety concern. Therefore, it is quite possible, as in this case, that more than one AD will address the same or very similar issues as they apply to more than one type design or more than one variant of a type design. In addition, in this case, each AD docket number cited by the commenter proposed to supersede an existing AD. Therefore, the AD's need to remain separate to maintain consistency with the superseded AD's in order to simplify the tracking of compliance by PW JT8D operators. Further, the economic impact of both rules combined would amount to approximately $51,000,000, which is far below the threshold for declaring a combined AD a significant regulatory action under Executive Order 12886 or a significant rule under existing DOT regulatory policy.

The FAA received several comments that state that the FAA should evaluate PW JT8D engine models separately to determine if all models require the proposed actions to be accomplished, or if some models can be exempted from compliance due to differences in design or demonstrated operational safety. The FAA does not concur. Design differences between the various PW JT8D engine models were evaluated and no significant differences, other than low pressure rotor speed in the higher rated engines, were revealed that could impact containment capability. The increased low pressure rotor speeds are protected for in the design of the higher rated engines with the addition of a turbine shield, and the historical event data does not indicate that these higher low pressure rotor speeds result in a greater number of uncontained failures.

One commenter states that an alternative to the compliance end date of December 31, 1998, should be expressed in hours and cycles, with performance required as whichever occur later, to accommodate low utilization operators. The FAA concurs The FAA performed a risk analysis to determine the inspection interval requirements and hourly and cyclic equivalents to the compliance end date were derived from that risk analysis. The FAA has added the hourly and cyclic equivalents to the AD.

The FAA received several comments that state that the compliance requirements should be revised to minimize economic impact due to major engine disassembly. Specifically, modification of the LPT vane cluster assemblies and installation of the No. 6 bearing scavenge pump bracket bushing could entail major engine disassembly depending on the scope of work performed at the next shop visit occurring after the effective date of the AD. The FAA concurs in part. The FAA has determined that the modification of the LPT vane cluster assemblies can be accomplished at the next part access and still meet safety objectives. However, the compliance requirements for the installation of the No. 6 bearing scavenge pump bracket bushing is still required at the next shop visit to achieve the desired level of safety.

The FAA received several comments that state that PMA 3rd stage outer air seal, Part Number (P/N) M2533, manufactured by McClain International, should be an acceptable alternative installation to the corresponding PW part, P/N 811962. The FAA concurs. Third stage turbine outer air seal, P/N M2533, has been granted FAA PMA approval, and therefore meets all applicable Federal Aviation Regulations and is directly interchangeable with PW P/N 811962. The AD has been revised to specify P/N M2533 as an acceptable installation.

One commenter states the PW JT8D–17R and –17AR engines should be exempted from the requirement to install the thicker third stage turbine outer air seal because these engines are already configured with a turbine shield for containment protection. The FAA does not concur. The PW JT8D–17AR engines require additional containment protection due to higher rated low pressure rotor speeds on these engine models. Therefore, both the thicker third stage turbine outer air seal and the turbine shield are required for these engine models.

The FAA received two comments that state that additional costs could be incurred due to lack of availability of the parts required by this AD. The FAA does not concur. The FAA has coordinated this AD closely with PW to ensure the availability of the required parts. In addition, PMA parts are specified in this AD as an acceptable alternative for PW parts.

One commenter concurs with the rule as proposed.

The FAA has extended the compliance end date to December 31, 1999, in order to maintain consistency with AD 94–20–08, Docket No. 93–ANE–83. In addition, the compliance requirement for modification of the LPT vane cluster assemblies has been revised to exempt engines that incorporate PW SB No. 5859, Revision 3, dated January 22, 1991, or earlier revisions.

In addition, the FAA has determined that inspections of the third and fourth stage LPT blade sets in accordance with the procedures and intervals described in PW ASB No. 5913, Revision 5, dated August 10, 1992; or PW ASB No. 5913, Revision 4, dated February 20, 1992, constitute acceptable alternative methods of compliance for the inspections required by paragraph (a)(1) of this AD.

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

The FAA estimates that 944 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately an average of 4 work hours, based on fleet configuration mix, per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $7,235 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,037,520.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8239 (57 FR 23050, June 1, 1992) and by adding a new airworthiness directive, Amendment 39–9037, to read as follows:

94–20–09 Pratt & Whitney: Amendment 39–9037. Docket 93–ANE–72. Supersedes AD 92–10–05, Amendment 39–8239.

Applicability: Pratt & Whitney (PW) Model JT8D–15A, –17A, and –17AR turbofan engines, installed on but not limited to Boeing 737 and 727 series aircraft, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aircraft resulting from engine debris following a low pressure turbine (LPT) blade or shaft failure, accomplish the following:

(a) For engines that do not contain PW honeycomb third stage outer airseal, Part Number (P/N) 801931, 802097, 797594, or 798279, or Parts Manufacturer Approval honeycomb third stage outer airseal P/N PI9336 or P/N M2433, and fan exhaust inner front duct segment assemblies that are installed in accordance with PW Alert Service Bulletin (ASB) No. 6039, Revision 3, dated October 15, 1993, or earlier revisions, accomplish the following:

(1) Conduct initial and repetitive inspections on installed third and fourth stage LPT blade sets, and remove and replace with serviceable blade sets, as necessary, in accordance with the requirements of Part 2 of the Accomplishment Instructions of PW ASB No. A5913, Revision 6, dated October 15, 1993, as follows:

(i) Initially inspect the blade shroud crossnotches of the third stage LPT blade set when specified in paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this AD, whichever occurs later. as follows:

(A) Inspect within 3,000 cycles or 3,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672, or since the last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 500 cycles or 500 hours time in service, whichever occurs first, after the effective date of this AD.

(ii) Initially inspect the blade shroud crossnotches of the fourth stage LPT blade set when specified in paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD, whichever occurs later, as follows:

(A) Inspect within 3,000 cycles or 3,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–13 of PW JT8D Engine Manual P/N 481672, or since the last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–13 of the PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 500 cycles or 500 hours time in service, whichever occurs first, after the effective date of this AD.

(iii) Thereafter, inspect the third and fourth stage LPT blade sets in accordance with the procedures and intervals specified in PW ASB No. A5913, Revision 6, dated October 15, 1993.

(2) At the next shop visit after the effective date of this AD; but not later than December 31, 1999, 8,000 hours time in service after the effective date of this AD, or 7,000 cycles after the effective date of this AD; whichever occurs latest, install the improved inner front fan exhaust duct and associated hardware in accordance with Part A of the Accomplishment Instructions of PW ASB No. A6110, Revision 1, dated October 15, 1993.

(3) At the next access to the third stage turbine air sealing ring after the effective date of this AD, but not later than December 31, 1999, 8,000 hours time in service after the effective date of this AD or 7,000 cycles after the effective date of this AD, whichever occurs latest, install the improved third stage turbine air sealing ring and associated hardware in accordance with Part B of the Accomplishment Instructions of PW ASB No. A6110, Revision 1, dated October 15, 1993.

Note: Third stage turbine outer air seal, P/N M2533, is an acceptable alternative to PW P/N 811962 for compliance with this paragraph.

(4) At the next shop visit after the effective date of this AD, but not later than December 31, 1999, 8,000 hours time in service after the effective date of this AD or 7,000 cycles after the effective date of this AD, whichever occurs latest, install the improved No. 6 bearing scavenge pump bracket bushing in accordance with the Accomplishment Instructions of PW ASB No. A6131, dated August 24, 1993.

(5) For engines that do not incorporate PW SB No. 5859, Revision 3, dated January 22, 1991, or earlier revisions, accomplish the following: at the next accessibility to the third and fourth stage LPT vane cluster assemblies after the effective date of this AD, but not later than December 31, 1999, 8,000 hours time in service after the effective date of this AD or 7,000 cycles after the effective date of this AD, whichever is latest, remove material from the inner platform leading edge on third and fourth stage LPT vane and vane cluster assemblies, and reidentify these modified vanes in accordance with the Accomplishment Instructions of PW SB No. 5748, Revision 5, dated August 3, 1993.

(6) Accomplishment of the installations and modification required by paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of this AD constitutes terminating action to the inspections required by paragraph (a)(1) of this AD.

(b) For engines that do contain PW honeycomb third stage outer airseal, P/N 801931, 802097, 797594, or 798279, or Parts Manufacturer Approval honeycomb third stage outer airseal P/N PI9336 or P/N M2433, and fan exhaust inner front duct segment assemblies that are installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions, perform the installations and modifications required by paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of this AD at the times specified in those respective paragraphs.

(c) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails separation of pairs of major mating engine flanges or the removal of a disk, hub, or spool at a maintenance facility that is capable of compliance with the requirements of this AD, regardless of other planned maintenance, except for field maintenance type activities performed at this maintenance facility in lieu of performing them on-wing or at another peripheral facility.

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

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

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

(f) The inspections and modification shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
PW ASB No. A5913	1	6	October 15, 1993.
	2	4	February 20, 1992.
	3–8	6	October 15, 1993.
	9	4	February 20, 1992.
	10	6	October 15, 1993.
	11	4	February 20, 1992.
	12	6	October 15, 1993.
Appendix A	1	6	October 15, 1993.
	2–3	5	August 10, 1992.
	4	2	September 28, 1990.
	5	6	October 15, 1993.
	6	Original	April 2, 1990.
	7	2	September 28, 1990.
	8–14	Original	April 2, 1990.
Total pages: 26			
PW ASB No. A6110	1	1	October 15, 1993.
	2	Original	March 19, 1993.
	3–59	1	October 15, 1993.
Total pages: 59			
PW ASB No. A6131	1–13	Original	August 24, 1993.
Total pages: 13.			
PW SB No. 5748	1	5	August 3, 1993.
	2	2	September 15, 1988.
	3–4	5	August 3, 1993.
	5–10	2	September 15, 1988.
	11–12	5	August 3, 1993.
	13–16	2	September 15, 1988.
	17–18	4	October 3, 1989.
Total pages: 18			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 14, 1994.

Issued in Burlington, Massachusetts, on September 22, 1994.

Mark C. Fulmer,

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

[FR Doc. 94–24201 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–AGL–25]

Modification of Class D Airspace; NAS Glenview, IL, and Establishment of Class D and Class E Airspace; Wheeling, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Glenview Naval Air Station (NAS), IL, by amending the area's effective hours to coincide with the associated air traffic control tower's hours of operation. This action also establishes Class D and E airspace at Palwaukee Municipal Airport, Wheeling, IL. Wheeling, IL, previously had airspace coverage from the full-time Class D airspace area at NAS Glenview, IL. The part-time Class D airspace area at NAS Glenview, IL, however, is not adequate for Wheeling, IL. The Wheeling, IL, Class D airspace effective hours will coincide with the associated air traffic control tower's hours of operation and the Class E airspace will be effective when the associated air traffic control tower is closed. The intent of this action is to establish Class D airspace areas when two-way radio communications with the associated air traffic control tower is required, and to provide adequate Class E airspace at Wheeling, IL, for instrument approach procedures when the control tower is closed. In addition, the airspace description for Glenview, IL, has been editorially modified to describe the airspace in relation to the Airport Reference Point (ARP).

DATES: Effective date—0901 UTC, December 8, 1994.

Comment date: Comments must be received on or before November 25, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, System Management Br., AGL–530, Docket No. 94–AGL–25, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7459.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

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

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at NAS Glenview, IL, by amending the area's effective hours to coincide with the associated air traffic control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at NAS Glenview, IL. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. This action also establishes Class D and E airspace at Palwaukee Municipal Airport, Wheeling, IL. Wheeling, IL, previously had airspace coverage from the full-time Class D airspace area at NAS Glenview, IL. The part-time Class D airspace area at NAS Glenview, IL, however, is not adequate for Wheeling, IL. The Wheeling, IL, Class D airspace effective hours will coincide with the associated air traffic control tower's hours of operation and the Class E airspace will be effective when the associated air traffic control tower is closed. The intent of this action is to establish Class D airspace areas when two-way radio communications is required with the associated air traffic control towers during the control towers hours of operation, and to provide adequate Class E airspace at Wheeling, IL, for instrument approach procedures when the control tower is closed.

The legal description for Glenview, IL, has been editorially modified to describe the airspace in relation to the ARP rather than the current description that uses the Northbrook, IL, VORTAC. The SIAP for Palwaukee, IL, which was previously included in the Glenview, IL, Class D airspace designation, used the Northbrook VORTAC. With the establishment of separate Class D airspace areas for Wheeling, IL, and Glenview, IL, it is necessary to editorially modify the Glenview, IL, Class D airspace designation. This modification does not change the airspace.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify the NAS Glenview, IL, Class D airspace area and establish the Wheeling, IL, Class D and E airspace areas in order to promote the safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

AGL IL D NAS GLENVIEW, IL [Revised]

NAS Glenview, IL
(lat. 42°05′00″ N., long. 87°49′06″ W.)
Northbrook VORTAC
(lat. 42°13′26″ N., long. 87°57′06″ W.)
Glenview TACAN
(lat. 42°05′08″ N., long. 87°49′21″ W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.1-mile radius of NAS Glenview and within 1.8 miles each side of the Northbrook VORTAC 145° radial extending from the Glenview NAS 4.1-mile radius to 5.5 miles northwest of the NAS, and within 1.7 miles each side of the Glenview TACAN 100° radial extending from the 4.1-mile radius to 5.7 miles east of the NAS and within 2.0 miles west and 1.4 miles east of the Glenview TACAN 002° radial extending from the 4.1-mile radius to 6.1 miles north of the NAS, excluding that airspace within the Chicago, IL, Class B airspace. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * * * *

AGL IL D Wheeling, IL [New]

Wheeling, Palwaukee Municipal Airport, IL
(lat. 42°06′49″ N., long. 87°54′05″ W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.4-mile radius of Palwaukee Municipal Airport, excluding that airspace within the Chicago, IL, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * * * *

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

* * * * *

AGL IL E2 Wheeling, IL [New]

Wheeling, Palwaukee Municipal Airport, IL
(lat. 42°06′49″ N., long. 87°54′05″ W.)

Within a 4.4-mile radius of Palwaukee Municipal Airport, excluding that airspace within the Chicago, IL, Class B airspace. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * * * *

Issued in Des Plaines, Illinois on October 3, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–25320 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–42]

Establishment of Class E Airspace: Springdale, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Springdale, AR. This controlled airspace, upward from the surface, is needed for Instrument Flight Rules (IFR) operations during the hours that the control tower is closed at Springdale, AR. The intended effect of this action is to provide adequate Class E airspace for IFR operations during the hours that the control tower is closed.

EFFECTIVE DATE: 0901 UTC, December 8, 1994.

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

SUPPLEMENTARY INFORMATION:

History

On July 6, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Springdale, AR, was published in the **Federal Register** (59 FR 34585). That action proposed to establish Class E airspace at Springdale, AR, during the hours that the control tower is closed to contain IFR operations at the airport.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Coordinates reported for Springdale, AR, were incorrectly identified in the notice, and are corrected in this amendment. Except for editorial changes, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in paragraph 6002 of FAA Order 7400.9B, dated June 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Springdale, AR, to provide controlled airspace for IFR operations during the hours that the control tower is closed.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW AR E Springdale, AR [New]

Springdale Municipal Airport, AR
(latitude 36°10'47" N., longitude 94°07'09" W.
Razorback VORTAC
(latitude 36°14'47" N., longitude 94°07'17" W.)

That airspace within a 4.1-mile radius of Springdale Municipal Airport and within 1.3 miles each side of the 358° and 178° radials of the Razorback VORTAC extending from the 4.1-mile radius to 4.6 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on October 3, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–25321 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–10]

Modification of Class E Airspace; Minneapolis, MN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the effective date and airspace designation of the Minneapolis, Minnesota (Farmington, MN VORTAC), Class E airspace published in a final rule on August 24, 1994 (59 FR 43458), Airspace Docket Number 94–AGL–10.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–20799, Airspace Docket 94–AGL–10, published August 24, 1994 (59 FR 43458), had an effective date of October 18, 1994, and the latitude for the Farmington, MN VORTAC has an incorrect second. This action corrects that error by changing the effective date to October 13, 1994, and changes the Farmington, MN VORTAC seconds to 51.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the effective date for the Minneapolis, Minnesota Class E airspace, as published in the **Federal Register** on August 24, 1994 (59 FR 43458), (**Federal Register** Document 94–20799; page 43458; column 3), is corrected to October 13, 1994, and the airspace designation for the Minneapolis, Minnesota, Class E airspace, as published in the **Federal Register** on August 24, 1994 (59 FR 43458), (**Federal Register** Document 94–20799; page 43459; column 2), is corrected in the amendment to the incorporation by reference 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

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

* * * * *

AGL MN E5 Minneapolis, MN [Revised]

Farmington, MN VORTAC
(lat. 44°37'51" N., long. 93°10'55" W.)

* * * * *

Issued in Des Plaines, Illinois on October 5, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–25312 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 990

[Docket No. R–94–1681; FR–2971–F–02]

RIN 2577–AA99

Low-Income Public Housing; Performance Funding System: Elimination of Heating Degree Day Adjustment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule will eliminate the application of the heating degree day adjustment factor in determining the component of operating subsidy eligibility relating to utility consumption under the Performance Funding System (PFS). The rule implements section 508 of the Cranston-Gonzalez National Affordable Housing Act.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: For information concerning part 990, Mr. John T. Comerford, Director, Financial Management Division, Office of Assisted Housing, Public and Indian Housing, Room 4212, U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington D.C. 20410, telephone (202) 708–1872.

For information concerning part 905, Mr. Dominic Nessi, Director, Office of Native American Programs, U.S. Department of Housing and Urban Development, L'Enfant Plaza, Building 490, Room 8204, Washington D.C. 20410, telephone (202) 755–0032.

Hearing or speech impaired individuals may call HUD's TDD number, (202) 708–0850. [These telephone numbers are not toll-free.]

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Statement

This rule eliminates a previously required adjustment and therefore reduces the public reporting burden. The information collection requirements contained in this rule have been reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0029.

II. Background

Section 508 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (104 Stat. 4187) directs the Department to incorporate into the PFS a methodology to adjust utility consumption to account for Cooling Degree Days that is the same as the methodology used to account for Heating Degree Days. The impetus for this legislation was that housing agencies in the sunbelt who had to pay higher utility bills for air conditioning during hot summers (e.g., in projects that were "master-metered" in which the cost of running air conditioning could not be assigned to the tenant) wanted an adjustment in their PFS payments to account for the increased utility consumption.

Consistent with the explicit policy stated in the statute, the proposed rule contained a literal implementation of the statutory language. However, the Department was concerned that its implementation of this provision raised

some basic questions and could create some major distortions in the funding system. Because of this, it was determined appropriate to open a discussion of policy alternatives in the Notice of Proposed Rulemaking published in the **Federal Register** on October 1, 1993 (58 FR 51261) and to invite public comment on the issues surrounding implementation of this statutory provision.

Because of the potential importance of this change, and because the Department was aware that there are additional factors to consider in calculating cooling load and cost other than ambient temperatures, the Preamble to the proposed rule described three alternate scenarios for addressing the issue of heating and cooling degree day adjustments in the PFS formula:

1. Implement cooling degree day adjustment exactly like the heating degree day adjustment.

2. Isolate the consumption of the meter estimated to be used for heating or cooling by tracking the monthly consumption, and perform a cooling and heating degree days adjustment to the portion of utilities estimated to be used for heating or cooling.

3. Drop all degree day adjustments in the PFS. We invited public comment on these alternate approaches or suggestions of additional alternatives.

III. Response to Public Comments

There were fifteen public comments on the proposed rule. The fifteen commenters included 13 Housing Agencies (HAs), one taxpayer, and the Council of Large Public Housing Authorities. Fourteen of the fifteen commenters recommended that the Department adopt the third option.

Only one commenter did not recommend the third option. Instead this commenter presented options that combined elements of options 2 and 3:

(A) Establish areas to receive cooling allowances by geographical zones rather than cooling degree days. A twenty year temperature history could be the basis for the allowance. This would include seasonal starting and stopping dates as well as intensity of energy requirements.

(B) Develop formulae that allow less energies for well insulated housing as well as additional energies for housing with high solar gain. This could be done on a plus or minus percentage basis. An energy audit would be helpful in establishing the anticipated energy use of each unit.

(C) Collect energy use data from a variety of unit types, family types, and samples of several existing housing units in the specified zone. This data could be used as the basis for a fixed allowance for cooling purposes during the zone area's cooling season.

The other fourteen commenters recommended Option 3 because they found the benefit in reduced paperwork and administrative burden outweighs the benefit of an adjustment for temperature variations. As one stated, "Although theoretically, it appears prudent to adjust the utility consumption figures for weather conditions, practically, it is very difficult to do so with any degree of reliability." Another commenter summed up the benefits of Option 3 in one sentence, "It would simplify the system, allow timely post year adjustments and would average out over time."

In response to this level of agreement, the Department is adopting the third option and dropping all heating and cooling degree day adjustments. This approach will greatly simplify the PFS. The rolling base used to estimate utility consumption in the PFS will reflect the HA's recent history of utility consumption including the impact of local heating and cooling requirements. This rule will eliminate the need to separately track the consumption of each meter used to supply heating or air conditioning. This will reduce paperwork and the administrative burden on the Department and the Housing Agencies. It will eliminate the need to wait for publication of the degree day factors before adjustments can be made. This three month delay also affects the ability to develop ratings under the Public Housing Management Assessment Program (PHMAP). On the negative side, HAs will get only a 50 percent adjustment for consumption, without further adjustment to reflect weather conditions. Assuming that weather averages out over time, there will be no long term penalty or bonus.

IV. Timing of Implementation

By law, the PFS regulation remains in effect for the duration of a HA's fiscal year without change. The revisions of this rule will affect a particular HA's year end adjustments to its fiscal year beginning in Calendar Year 1995. HAs will apply heating degree day adjustments to their fiscal years which began during FFY 1994 and end in 12/94, 3/95, 6/95, and 9/95. The first years that will not be adjusted will be fiscal years ending 12/95, 3/96, 6/96, and 9/96.

V. Findings and Certifications

A. Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made on the proposed rule in accordance with HUD regulations in 24 CFR Part 50 which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. That Finding is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address. Since the provisions of this final rule were anticipated as an option stated in the proposed rule, that FONSI remains valid.

B. Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC.

C. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule may result in changes in the level of operating subsidy eligibility for certain public housing agencies, but we have no reason to believe that it would have disproportionate effect on small HAs.

D. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule refines an established formula under which HUD calculates operating subsidies for low-income housing developments, but contains no requirement for explicit action by local officials and will not interfere with State or local governmental functions.

E. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

F. Regulatory Agenda

This rule is listed as item 1705 under the Office of Public and Indian Housing in the Department's semiannual agenda of regulations published on April 25, 1994 (59 FR 20424, 20474), under Executive Order 12866 and the Regulatory Flexibility Act.

G. Catalog

The Catalog of Federal Domestic Assistance Program numbers for this rule are 14.146 and 14.147.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Homeownership, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Parts 905 and 990 are amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 is revised to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

§ 905.102 [Amended]

2. Section 905.102 is amended by removing the second sentence of the definition of *"Allowable utilities consumption level (AUCL)"*, and by removing the definitions of *"Change factor"* and *"Heating degree days (HDD)"*.

§ 905.715 [Amended]

3. Section 905.715 is amended by:

a. Removing the last sentence of paragraph (a);

b. Removing from paragraph (b)(2), the phrase "paragraph (f)", and adding in its place the phrase "paragraph (e)";

c. Removing from the introductory text of paragraph (c), the phrase "paragraph (g)(1)", and adding in its place the phrase "paragraph (f)(1)";

d. Removing from paragraph (c)(2)(iii), the phrase "paragraph (e)", and adding in its place the phrase "paragraph (d)", and by removing from the end of paragraph (c)(2)(iii), the phrase "and no change factor shall be applied";

e. Removing from paragraph (c)(4)(i), in two places, the phrase "paragraph (g)", and adding in its place the phrase "paragraph (f)";

f. Removing paragraph (c)(4)(ii), and by redesignating paragraph (c)(4)(iii) as paragraph (c)(4)(ii);

g. Removing paragraph (d);

h. Redesignating paragraph (e) as paragraph (d), and by removing from the last sentence of the paragraph the phrase, "No change factor shall be applied to actual per-unit per-month utility expenses, and", and by capitalizing the next word "Subsequent";

i. Redesignating paragraph (f) as paragraph (e), and by removing the phrase "(after adjustment for heating degree days in accordance with paragraph (d) of this section)"; and

j. Redesignating paragraph (g) as paragraph (f).

§ 905.730 [Amended]

4. Section 905.730 is amended by:

a. Removing from paragraph (c)(2)(i), the phrase "(adjusted for heating degree days in accordance with § 905.715(d),"; and

b. Amending paragraph (c)(2)(ii), by removing the phrase "§ 905.715(g)(1)", and adding in its place the phrase "§ 905.715(f)(1)"; by removing from the second sentence, the phrase "using a heating degree day adjustment for space heating utilities and"; and by removing the third and fourth sentences, "The heating degree day experience during the frozen rolling base period will be used instead of the degree days in the year being adjusted. The documentation on the degree days shall be supplied by the IHA and is subject to HUD approval."

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

5. The authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437(g) and 3535(d).

§ 990.102 [Amended]

6. In § 990.102, the second sentence of the definition of *"Allowable Utilities Consumption Level (AUCL)"* is removed, and the definitions of *"Change Factor"* and *"Heating Degree Days (HDD)"* are removed.

§ 990.107 [Amended]

7. Section 990.107 is amended by:

a. Removing the last sentence of paragraph (a);

b. Removing from paragraph (b)(2), the phrase "paragraph (f)" and adding in its place the phrase "paragraph (e)";

c. Removing from the introductory text of paragraph (c), the phrase "paragraph (g)(1)", and adding in its place the phrase "paragraph (f)(1)";

d. Removing from paragraph (c)(2)(iii), the phrase "paragraph (e)", and adding in its place the phrase "paragraph (d)", and by removing the phrase "and no Change Factor shall be applied";

e. Removing from paragraph (c)(4)(i), in two places, the phrase "paragraph (g)", and adding in their place the phrase "paragraph (f)";

f. Removing paragraph (c)(4)(ii), and by redesignating paragraph (c)(4)(iii) as paragraph (c)(4)(ii);

g. Removing paragraph (d);

h. Redesignating paragraph (e) as paragraph (d), and amending the newly redesignated paragraph (d) by removing the phrase, "No Change Factor shall be applied to actual PUM utility expenses, and", and by capitalizing the next word "Subsequent";

i. Redesignating paragraph (f) as paragraph (e), and amending by removing the phrase "(after adjustment for heating degree days in accordance with paragraph (d) of this section)"; and

j. Redesignating paragraph (g) as paragraph (f).

§ 990.110 [Amended]

8. Section 990.110 is amended by:

a. Removing from paragraph (c)(2)(i), the phrase "(adjusted for Heating Degree Days in accordance with § 990.107(d),"; and

b. Amending paragraph (c)(2)(ii), by removing the phrase "§ 990.107(g)(1)" and adding in its place the phrase "§ 990.107(f)(1)", by removing the phrase "using a heating degree day adjustment for space heating utilities and", and by removing the sentences "The heating degree day experience during the frozen rolling base period will be used instead of the degree days in the year being adjusted. The documentation on the degree days must be supplied by the PHA and is subject to HUD approval."

Dated: October 5, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–25391 Filed 10–12–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN Number 1510–AA40

Rules and Procedures for Funds Transfers

AGENCY: Treasury, Fiscal, Financial Management Service.

ACTION: Final rule.

SUMMARY: This rule amends the regulations implementing the Cash Management Improvement Act of 1990 (CMIA), as amended, which governs the transfer of funds between the Federal Government and the States under Federal assistance programs. It finalizes without change a previously published interim rule which delayed the date on which the State of New York had to begin the second phase of CMIA implementation. This rulemaking makes no other changes to the CMIA regulations.

EFFECTIVE DATE: This rulemaking is effective November 14, 1994.

FOR FURTHER INFORMATION CONTACT: John Galligan, (202) 874–6935.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 31 CFR part 205 established a two-stage implementation of the Cash Management Improvement Act of 1990 (CMIA), as amended, which governs the transfer of funds between the Federal Government and the States under Federal assistance programs.

During the first phase of implementation, only the 20 largest Federal assistance programs were covered by CMIA. From the second year onward, the scope of CMIA expands to cover all "major Federal assistance programs," as defined by the Single Audit Act. This second phase of implementation takes effect at the start of each State's 1995 fiscal year, so that States can introduce the new cash management requirements with a new fiscal year.

The State of New York, however, has a unique fiscal year that begins on April 1, which is 3 months prior to the start of the typical State fiscal year on July 1. Hence, New York would be subject to expanded CMIA requirements 3 months before the other States; it would have only 9 months for the first phase of implementation, whereas all other States and territories would have a full year.

On March 30, 1994, therefore, the Financial Management Service (FMS) issued an interim rule to amend 31 CFR part 205 and allow New York a full year for the first stage of implementation (59 FR 14753). This interim rule modified the implementation schedule so that no State had to begin the second phase prior to July 1, 1994. It made no other changes to 31 CFR part 205 and affected only New York. It was effective upon publication, but public comment was solicited from all interested parties.

The FMS received one comment on the interim rule. The Executive Department of the State of New York wrote to express support for it. Accordingly, the FMS considers it appropriate to adopt the interim rule as a final rule. The purpose of this rulemaking, therefore, is to finalize, without change, the provision contained in the interim rule.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

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

List of Subjects in 31 CFR Part 205

Electronic funds transfer, Grant administration, Grant programs, Intergovernmental relations.

Issuance

For the reasons set forth in the preamble, 31 CFR part 205 is amended by this final rule as follows:

PART 205—[AMENDED]

1. The authority citation for 31 CFR Part 205 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503.

2. Paragraph (b) of § 205.4 is revised to read as follows:

§ 205.4 Scope of subpart.

* * * * *

(b) *Threshold of materiality.* From the later of July 1, 1994, or the beginning of a State's 1995 fiscal year, and thereafter, this subpart applies, at a minimum, to all programs that meet the threshold for major Federal assistance programs in a State.

* * * * *

Dated: September 9, 1994.

Russell D. Morris,

Commissioner.

[FR Doc. 94–25329 Filed 10–12–94; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Subsistence Taking of Fish and Wildlife Regulations; Correcting Amendments

AGENCY: Forest Service, USDA, Fish and Wildlife Service, Interior.

ACTION: Correcting amendments.

SUMMARY: These corrections amend the Subsistence Management Regulations for Public Lands in Alaska (50 CFR part 100 and 36 CFR part 242, published in the **Federal Register** on June 3, 1994) implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980.

DATES: Effective July 1, 1994, these corrections amend the Subsistence Management Regulations, 50 CFR part 100 and 36 CFR part 242.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman Howse, Assistant Director, Subsistence, USDA—Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background—Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the

subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with subparts A, B, and C of these regulations, a Federal Subsistence Board (Board) was established to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed these corrections and agree with their substance. Because Subpart D relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical correcting text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Proposed Subpart D regulations for the 1994–1995 seasons and bag limits, and methods and means were published on September 2, 1993, in the **Federal Register** (58 FR 46678–46706). A 60-day comment period providing for public review of the proposed rule was advertised by mail, radio, and newspaper. Subsequent to that 60-day review period, the Board prepared a booklet describing all proposals for change to Subpart D. The public then had an additional 60 days in which to comment on the proposals for changes to the regulations. The Federal Subsistence Regional Advisory Councils (Regional Councils) met in regional centers, received public comments, and formulated recommendations to the Board on proposals for their respective regions. The final regulations, published on June 3, 1994 (59 FR 29032–29063) reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board during their April meeting.

These correcting amendments are a result of Requests for Reconsideration of some of the Board's decisions in April and some requests for Special Action as a result of resource concerns. Below are summaries of each action.

Unit 1(B)—Goat

The Board reopened the Frosty Bay Ridge area of Unit 1(B) to goat hunting. This area had been closed due to timber harvest activities in the area which could have subjected the small herd to excessive hunting pressure. Timber harvest activities were completed during the summer of 1994. The Board, having analyzed the available data, found that the harvest of goats in the area was consistent with the conservation of healthy populations and the justification for the closure no longer applied. The change will provide an August 1–December 31 season with a harvest limit of two goats by State registration permit only.

Unit 18—Moose

The Board acted on a Request for Reconsideration from the Lower Yukon Moose Management Committee to revise the action the Board took in April opening the lower Yukon area to moose hunting. Unit 18 is a large area encompassing over 26 million acres primarily in the Yukon and Kuskokwim River deltas. The traditional hunting periods for moose are slightly different in different areas of the Unit. The Request to the Board sought to revise the season in the Unit based on those differences. The Board reviewed the data and determined that providing different seasons in different areas of the unit would best accommodate traditional hunting periods and still be consistent with the conservation of healthy populations. The change will also correct a misprint in the June 3, **Federal Register** printing: The Kanektok and Goodnews drainages will remain closed to moose hunting, as they have been in the past. The Unit will also be divided into three other areas with different seasons (September 5–25, September 1–30, and August 25–September 25). Two of the areas will continue to have a 10-day winter hunt that will be announced later.

Unit 20(C)—Moose

The Board acted on a request from the Denali Subsistence Resource Commission to the Secretary of the Interior to establish an additional moose season on National Park Service lands in Unit 20(C). A review of the data indicated that there is a customary and traditional basis for a late fall or early winter hunt. The moose population in the area is stable and can withstand the additional harvest. The Board determined that the additional season would accommodate customary and traditional hunting periods and still be consistent with the conservation of healthy populations. The change establishes an additional November 15–December 15 hunt with a harvest limit of one antlered bull, except white-phased or partial albino, for Denali National Park and Preserve lands west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980.

Units 23 and 26(A)—Dall Sheep

The Board received a request for a Special Action closing the Dall sheep season in northwest Alaska. This request follows an Alaska Department of Fish and Game Emergency Order closing the same area. The sheep population in northwest Alaska has experienced a dramatic decline since 1989 with a series of severe winters, high predation, and poor lamb production. Therefore, the Board closed the season to ensure the continued viability of the sheep populations in Northwest Alaska. The change closed the sheep season in Unit 23 west of Howard Pass and the Aniuk, Cutler, and Redstone Rivers and in Unit 26(A) west of Howard Pass and the Etivluk River.

Only the items described above are being changed; but for clarity, the entire table section for the pertinent species in each Unit is reproduced.

All of the above actions were supported by the Regional Councils in the affected areas. Notice of the Board meeting and the subjects to be considered were widely circulated and the public had an opportunity to comment and participate.

The Board finds that additional public notice and comment requirements under the Administrative Procedures Act (APA) for this extension are impracticable, unnecessary, and contrary to the public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the public notice and comment

procedures prior to publication of this rule correction. The Board also finds good cause under 5 U.S.C. 553(d)(3) to make this rule correction effective July 1, 1994, the effective date of the Subsistence Management Regulations for Public Lands in Alaska.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington DC 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule was not subject to QMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; Lou Waller, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian affairs; and Norman Howse, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Subsistence, Wildlife.

For the reasons set out in the preamble, title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, are amended as set forth below.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Section ____.25(k)(1)(vii)(B) is amended in the table under "Hunting"

be revising the entry for Goat to read as follows:

§ ____.25 **Subsistence taking of wildlife.**

* * * * * * *

(k) * * *

(1) * * *

(vii) * * *

(B) * * *

Harvest limits	Open season
Hunting:	
. . . . .	
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of the Bradfield Canal and the North Fork of the Bradfield River. 1 goat by State registration permit only; that portion between LeConte Bay and the North Fork of Bradfield River/Canal will require a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
Remainder of Unit 1(C)—1 goat by State registration permit only	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Remainder of Unit 1(D)—1 goat by State registration permit only	Aug. 1–Dec. 31.
. . . . .	

* * * * *

3. Section ____.25(k)(18)(iii)(B) is amended in the table under "Hunting" by revising the entry for Moose to read as follows:

* * * * * *

(k) * * *

(18)* * *

(iii) * * *

(B) * * *

Harvest limits	Open season
Hunting:	
. . . . .	
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—Goodnews River and Kanektok River drainages	No open season.
Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Aug. 25–Sept. 25. Winter season to be announced.
Remainder of Unit 18—1 antlered bull A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Sept. 1–Sept. 30. Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by rural Alaska residents of Unit 18 and Upper Kalskag during seasons identified above	
. . . . .	

* * * * *

4. Section ____.25(k)(20)(iii)(C) is amended in the table under "Hunting" by revising the entry for Moose to read as follows:

* * * * * *

(k) * * *

(20) * * *

(iii) * * *

(C) * * *

Harvest limits	Open season
Hunting:	
. . . . .	
Moose:	
Unit 20 (A)—the Ferry Trail Management Area—1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side.	Sept. 1–Sept. 20.

Harvest limits	Open season
Remainder of Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20 (B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20 (B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—antlered bull.	Sept. 1–Sept. 20.
Remainder of Unit 20(B) — 1 antlered bull	Sept. 1 — Sept. 20.
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Remainder of Unit 20(C) — 1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1 — Sept. 30.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull.	Sept. 1–Sept. 15.
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 antlered bull.	Sept. 5–Sept. 25.
Unit 20(F)—that portion within the Dalton Highway Corridor	Sept. 1–Sept. 25.

* * * * * * *

5. Section ____.25(k)(23)(iii)(C) is amended in the table under "Hunting" by revising the entry for Moose to read as follows:

* * * * * * *

(k) * * *
(20) * * *
(iii) * * *
(C) * * *

Harvest limits	Open season
Hunting:	
Sheep:	
Unit 23—that portion west of Howard Pass and the Aniuk, Cutler, and Redstone Rivers	No open season.
Remainder of Unit 23—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Remainder of Unit 23—1 sheep	Oct. 1–Apr. 30.

* * * * * * *

6. Section ____.25(k)(26)(iii)(B) is amended in the table under "hunting" by revising the entry for Sheep to read as follows:

* * * * * * *

(k) * * *
(26) * * *
(iii) * * *
(B) * * *

Harvest limits	Open season
Sheep:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River	No open season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug 10–Sept. 20.
Remainder of Unit 26 (A) and (B) — including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10—Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1—Apr. 30 season. Kaktovik residents may harvest sheep in accordance with a Federal community harvest strategy for Unit 26(C) which provides for take of up to two harvest limits of 3 sheep by designated hunter.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.

* * * * *

Dated: September 7, 1994.

William L. Hensley,

Chair, Federal Subsistence Board.

Robert W. Williams,

Acting Regional Forester USDA-Forest Service.

Dated: September 8, 1994.

[FR Doc. 94–25232 Filed 10–12–94; 8:45 am]

BILLING CODE 3410–11–M

POSTAL SERVICE

39 CFR Part 962

Rules of Practice in Proceedings Relative to the Program Fraud Civil Remedies Act

AGENCY: Postal Service.

ACTION: Amendment of final rule.

SUMMARY: This rule revises the regulation concerning settlement of cases brought under the Program Fraud Civil Remedies Act.

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268–3076.

SUPPLEMENTARY INFORMATION: On January 20, 1994, the Postal Service published a final rule amending its rules of practice in proceedings under the Program Fraud Civil Remedies Act with regard to settlement authority. This notice republishes section 39 CFR 962.26 in its entirety, correcting errors contained in the January 20, 1994, document. 59 FR 2987.

List of Subjects in 39 CFR Part 962

Administrative practice and procedure, Fraud, Penalties, Postal Service.

In consideration of the foregoing, 39 CFR part 962 is amended as set forth below.

PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

1. The authority citation for part 962 continues to read as follows:

Authority: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

2. Section 962.26 is revised to read as follows:

§ 962.26 Settlement.

(a) Either party may make offers of settlement or proposals of adjustment at any time.

(b) The Reviewing Official has the exclusive authority to compromise or settle any allegations or determinations of liability under 31 U.S.C. 3802 without the consent of the Presiding Officer, except during the pendency of an appeal to the appropriate United States district court pursuant to 31 U.S.C. 3805 or during the pendency of an action to collect any penalties or assessments pursuant to 31 U.S.C. 3806.

(c) The Attorney General has the exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition for judicial review, or a pending action to recover such penalty or assessment.

(d) The Reviewing Official may recommend settlement terms to the Attorney General, as appropriate.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–25229 Filed 10–12–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN32–2–6679; FRL–5077–8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On November 10, 1992, the Minnesota Pollution Control Agency (MPCA) submitted a SIP revision which included two elements: A commitment from the Governor or his designee to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation; and a schedule of implementation. On November 12, 1993, and December 15, 1993, the MPCA fulfilled its commitment by submitting proposed revisions to its State Implementation Plan (SIP) for carbon monoxide to USEPA for approval. The submittal requests approval of its basic inspection and maintenance (I/M) program which applies to the Twin Cities seven-county metropolitan area. The Twin Cities seven-county metropolitan area, which includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, has been classified as moderate nonattainment for carbon monoxide. Therefore, section 187 of the Clean Air Act (CAA) requires the State to submit a basic I/M SIP. On August 5, 1994, USEPA proposed conditional approval of Minnesota's basic I/M SIP based on MPCA's commitment to adopt specific enforceable measures as outlined in the July 5, 1994, letter from Charles Williams, Commissioner MPCA, to Valdas Adamkus, Regional Administrator, USEPA. The notice of proposed rulemaking also outlined several USEPA comments and required MPCA to adequately respond to the comments before USEPA would proceed with conditional approval. In this action, the USEPA is taking final action to conditionally approve the State's basic I/M program submittal based upon the commitment from the State and responses to USEPA's comments.

EFFECTIVE DATE: This final rule is effective on November 14, 1994.

ADDRESSES: Copies of the SIP revision request, public comments and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone John Paskevicz at 312 886–6084, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision request to the Ohio SIP is available for inspection at the Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), Room M1500, USEPA, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION:

I. Background

Section 187(a)(4) of the CAA, as amended in 1990, requires States with areas designated moderate nonattainment for carbon monoxide (CO) to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) requires USEPA to review, revise, update, and republish in the Federal Register guidance for State motor vehicle I/M programs. On November 5, 1992 (57 FR 52950), USEPA published a final rule establishing performance standards and other requirements for basic and enhanced I/M programs.

The November 5, 1992, I/M Regulation required each State that must implement an I/M program to submit by November 15, 1992, a State Implementation Plan (SIP) revision including two elements: (1) A commitment from the Governor or his designee to the timely adoption and implementation of an I/M program

meeting all requirements of the I/M regulation; and (2) a schedule of implementation. A memorandum dated December 11, 1992, from Phil Lorang, Director, Emission Planning and Strategies Division, outlines the elements that a State's schedule of implementation must include for acceptability. These elements include:

1. Passage of enabling statutory or other legal authority;
2. Proposal of draft regulations and promulgation of final regulations;
3. Issuance of final specifications and procedures;
4. Issuance of final request for Proposals (if applicable);
5. Licensing or certification of stations and inspectors;
6. The date mandatory testing will begin for each model year to be covered by the program;
7. The date full-stringency cut-points will take effect; and
8. All other relevant dates.

Following publication of the I/M program final rule (57 FR 52950), the USEPA also made available to States a document entitled, *Checklist for Completing the Inspection/Maintenance SIP (Checklist)*. The Checklist was developed to assist States in the development of I/M SIPs and outlines in detail the program elements the I/M SIP submittals must satisfy in order to be approved for incorporation into a State's federally approved SIP.

II. Summary of State Submittal

In 1988 the Minnesota Pollution Control Agency (MPCA) was authorized and directed by the State legislature to adopt rules establishing an I/M program in the Twin Cities seven county metropolitan area. As required by Minnesota Statute section 116.62, the MPCA adopted Minnesota Rules parts 7023.1010 to 7023.1105, which established standards and criteria governing the testing and inspection of motor vehicles for CO and hydrocarbon emissions in the Twin Cities seven county metropolitan area. Vehicle testing began on July 1, 1991.

Upon publication of the USEPA's final rule for I/M Programs (57 FR 52950), the MPCA recognized the need to amend the rules for operation of the State's I/M program. The State submitted a committal I/M SIP on November 10, 1992. The submittal includes a commitment for the adoption and implementation of an I/M program meeting all requirements of the I/M regulation and the CAA, a schedule of implementation which contained the elements described in Phil Lorang's December 11, 1992 memorandum, to meet the submittal date to USEPA of November 15, 1993.

On November 12, 1993, the MPCA submitted the first of two parts of its SIP revision request for the Twin Cities seven country metropolitan area I/M program. The second part of the revision request, consisting of the public hearing notice, was submitted by MPCA on December 15, 1993. The submittal requests approval of the Minnesota I/M program, which has been operating in the Twin Cities metropolitan area since July 1, 1991. The seven county metropolitan area includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, and has been designated moderate nonattainment for CO. This document was reviewed in detail in the August 5, 1994 (59 FR 39994), proposed rule.

III. USEPA Comments/MPCA Responses

In a May 11, 1994, letter to MPCA, USEPA identified several deficiencies in the I/M SIP submittal and provided the State the opportunity to respond to the deficiencies. The USEPA notified the State that several of the deficiencies could only be remedied through amendments to the State's statute and/or administrative rules.

In response to USEPA's comments on the deficiencies in the State's I/M submittal, the MPCA provided a July 5, 1994, letter from Charles Williams, Commissioner, MPCA, to Valdas V. Adamkus, Regional Administrator USEPA, which responds to USEPA comments and makes a commitment from the State to correct the deficiencies requiring amendments to the State's statute and/or administrative rules. The deficiencies requiring amendments to the State's I/M statute and/or administrative rules and MPCA's response to the deficiencies are outlined in the August 5, 1994, (50 FR 39994) notice of proposed rulemaking. This conditional approval is based in part on the State's July 5, 1994, commitment letter.

The USEPA's August 5, 1994, notice of proposed rulemaking (59 FR 3994) identified certain deficiencies in the I/M submittal and required MPCA to adequately address the USEPA comments before the end of the 30-day comment period. The USEPA's comments on the State's basic I/M program deficiencies and MPCA's responses to the comments are presented below. The notice of proposed rulemaking stated that USEPA would proceed with final conditional approval if the MPCA adequately addressed the comments during the 30-day comment period. The notice also stated that USEPA would take final action to disapprove the basic I/M SIP submittal if MPCA failed to adequately address the deficiencies.

Comment: Minnesota Rule 7023.1020 has been amended such that visual inspection of fuel inlet restrictors is no longer required. Therefore, the emission reductions obtained in the proposed program must be less than or equal to those obtained by the existing program. Since visual inspection for fuel inlet restrictors was previously required, there must be comparable improvement to the program if this element is to be removed. There is no evidence that the program has been strengthened. The State should either reinstate the fuel inlet restrictor requirement or make other improvements to the testing program so that the reductions are as good or better than under the existing program.

MPCA Response: The existing I/M program being proposed as part of the SIP submittal does not contain a provision for a visual inspection of the fuel inlet restrictor. The MPCA has not taken credit in the Mobile 5a modeling demonstration for the visual inspection of the fuel inlet restrictor. Therefore, there is no weakening of the submitted program and the Mobile 5amodeling has demonstrated compliance with the performance standard without the visual inspection of the fuel inlet restrictor.

Decision: Since the State has not taken credit for visual inspection of the fuel inlet restrictor and is able to demonstrate compliance with the performance standard, USEPA accepts the State's response to the Agency's comment.

Comment: USEPA has identified two issues regarding the compliance rate claimed by the State in the submittal. First, the submittal provides conflicting estimates of the number of unregistered vehicles in the Twin Cities metropolitan area. The contractor estimates that 22,000 vehicles in the area are registered without undergoing testing, while MPCA estimates that only 12,000 vehicles are registered without undergoing testing. The conflicting estimates undermine the reliability of the 97 percent compliance rate arrived at by the State. Secondly, the State uses a 96 percent compliance rate in the Mobile 5a modeling inputs, yet claims a 97 percent compliance rate in the submittal. USEPA can accept the 96 percent compliance rate without any further information or action on the State's part. If the State chooses to continue to claim the 97 percent compliance rate, it must supply USEPA with an estimate of the number of unregistered vehicles and a description

of mechanisms the state will employ to identify and encourage registration of unregistered vehicles.

MPCA Response: Minnesota accepts USEPA's recommendation that the State use the 96 percent compliance rate without providing any further information or action.

Decision: USEPA will not require the State to provide any further data or action by the State.

Comment: The USEPA is concerned that the $35.00 citation imposed on vehicle owners who fail to undergo testing and properly register their vehicles is not sufficiently high to deter non-compliance. The USEPA requests that MPCA provide further information on the maximum fine imposed on vehicle owners who fail to undergo testing.

MPCA Response: Vehicle owners who do not comply with the requirements of the Program are not allowed to renew their vehicle registration. Vehicle owners who drive on expired tabs or improperly store a vehicle with expired tabs, are cited for an expired registration and assessed a fine. The average fine for an expired registration is $35.00 The actual amount of the fine will vary depending on the county jurisdiction. Vehicles with an expired registration are also subject to towing and impound fees, with initial fees averaging $75.00, plus additional daily storage fees ranging from $8.00 to $15.00. In addition, these fees are based on each occurrence of citation for registration expiration. Vehicles with an expired registration are subject to receive multiple citations and subsequent fines until the vehicle registration has been renewed.

Decision: The USEPA accepts MPCA's response to the Agency's comment on citation penalties and will not require any further action from the State.

Comment: The USEPA believes that Minnesota's lack of a defined penalty schedule for cases of serious violations of the State's contractual agreement significantly lessens the stringency of the State's enforcement efforts. In addition, the State has not provided any description of its mechanisms for permanent fee retainage from the contractor. The MPCA must provide USEPA with a schedule of typical retainage for serious violations of the contractual agreement.

Response: In lieu of a specific penalty schedule, Minnesota uses a fee retainage to resolve all violations of our contractual agreement. Each month the contractor submits an invoice for accuracy, the State retains 10 percent of the invoice and pays the contractor the remaining 90 percent. The 10 percent retainage is accumulated monthly and released to the contractor at the end of each quarter, provided the MPCA is satisfied with the contractor's performance and that no violation of the contract has occurred. If a violation of the contract has occurred, the specific dollar amount not returned to the contractor would be determined by the MPCA based on the seriousness of the violation.

Minnesota believes that using retainage instead of a specific penalty schedule is a stronger contractual enforcement tool for several reasons. First, by using retainage, the MPCA has maximum flexibility to address contractual violations and is not limited only to those issues and penalty amounts which may be included in a penalty schedule. Second, the monthly retainage averages over $100,000 and meets the penalty requirement of $100 or 5 times the inspection fee as specified in Section 51.364. Lastly, the use of a retainage provides for a more suitable working relationship with the contractor. Because a portion of the contractor's profit is withheld monthly through retainage, the contractor is allowed to focus on contract compliance (not enforcement) to ensure that the full retainage is released quarterly. MPCA recommends that the existing retainage process be accepted as originally proposed in the SIP submittal.

Decision: The USEPA accepts MPCA's response to the Agency's comment on citation penalties and will not require any further action from the State.

Comment: The submittal indicates that quality assurance officers do not have direct authority to impose disciplinary action against inspectors employed by the contractor. MPCA quality assurance officers may only recommend disciplinary action or discharge of an employee. MPCA must commit to requiring the contractor to act upon the State's recommendation for disciplinary action.

Response: The MPCA quality assurance auditors perform quality assurance audits, identify any improper performance by a lane inspector, and initiate enforcement action against the lane inspector. The procedure to initiate enforcement action and impose discipline on a lane inspector begins with an immediate reporting to the station manager. The station manager acts accordingly. The quality assurance auditor then recommends disciplinary action to the MPCA Program Manager. The Program Manager and the contractor's Director of Operations then meet to discuss the violation, agree on the severity of the violation and mutually impose discipline. Types of discipline imposed to date include re-training, verbal reprimand, and dismissal of the lane inspector.

Decision: The USEPA accepts MPCA's response to the Agency's comment on citation penalties and will not require any further action from the State.

V. Rulemaking Action

Based upon the August 5, 1994 proposed rule and MPCA's responses to USEPA's comments, the USEPA is conditionally approving the Minnesota basic I/M SIP revision request for CO. The USEPA's conditional approval of Minnesota's basic I/M program is also based upon MPCA's commitment to adopt specific enforceable measures as outlined in the July 5, 1994, letter from CharlesWilliams, Commissioner MPCA, to Valdas Adamkus, Regional Administrator, USEPA. These commitments include a request to the State legislature to consider changes to the vehicle inspection program during the 1995 session, and to initiate a public hearing process to make changes in the administrative rule for the program to comply with the requirements of the Federal rules. The specific areas needing statutory and/or administrative rule changes include: the requirement that only certified automotive repair technicians perform repairs in order for a vehicle to obtain a waiver; the requirement that the State's minimum repair cost limit be actually spent befor a vehicle is eligible to receive a waiver; the requirement that vehicles with switched engines be tested using emission standards based on the model year of the chassis, unless the engine is newer in age than the chassis; and the requirement to change the re-inspection procedure to include a determination that an emission control device is the correct type for the certified configuration of the vehicle inspected. If Minnesota fails to implement the necessary changes within the one-year period following the date of this conditional approval, the conditional approval will convert to a disapproval of the SIP. Disapproval of the SIP will trigger the 18-month sanctions period of section 179 of the CAA. In addition, USEPA can elect to exercise its discretionary authority to impose sanctions prior to the end of the 18-month period. Finally, disapproval will trigger a 24-month Federal Implementation Plan (FIP) clock under section 110(c) of the CAA.

Miscellaneous

Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or

establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors in relation to relevant statutory and regulatory requirements.

Executive Order 12866

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

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities includesmall businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA to base its Final Conditional Approval of Minnesota's I/M program on such grounds. *Union Electric Co.* v. *U.SE.P.A.*, 427 U.S. 246, 256–66 (1976).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 12, 1994. 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).)

List of Subjects in 40 CFR Part 52

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

Dated: September 15, 1994.

Robert Springer,

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 Y—Minnesota

2. Section 52.1219 is added to read as follows:

§ 52.1219 Identification of plan—Conditional approval.

(a) On November 12, 1993, the Minnesota Pollution Control Agency submitted a revision request to Minnesota's carbon monoxide SIP for approval of the State's basic inspection and maintenance (I/M) program. The basic I/M program requirements apply to sources in the State's moderate nonattainment areas for carbon monoxide and includes the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties. The USEPA is conditionally approving Minnesota's basic I/M program provided that the State adopt specific enforceable measures as outlined in its July 5, 1994 letter from Charles W. Williams, Commissioner, Minnesota Air Pollution Control Agency.

(i) Incorporation by reference.

(A) Minnesota Rules relating to Motor Vehicle Emissions parts 7023.1010 to 7023.1105, effective January 8, 1994.

(ii) Additional material.

(A) Letter from the State of Minnesota to USEPA dated July 5, 1994.

[FR Doc. 94–25387 Filed 10–12–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[OH59–1–6376a; FRL–5078–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving the Ohio State Implementation Plan (SIP) revision request for the purpose of implementing an emissions statement program for stationary sources within the State's marginal and above ozone nonattainment areas. Section 182(a)(3)(B) of title I of the Clean Air Act, as amended in 1990 (CAA), requires States with areas designated nonattainment for the ozone National Ambient Air Quality Standard (NAAQS) to establish regulations for annual reporting of actual emissions by sources that emit VOC or NO_X in the nonattainment area. These emissions reports are referred to as "emissions statements." Sources in the following counties are subject to the emissions statement program requirements: Ashtabula, Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Lake, Licking, Lorain, Lucas, Mahoning, Medina, Miami, Montgomery, Portage, Stark, Summit, Trumbull, Warren, and Wood.

DATES: This final rule will be effective December 12, 1994 unless notice is received by November 14, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the State submittal for this action are available for public inspection during normal business hours at the following location (it is recommended that you contact Gina Smith at (312) 886–7018 before visiting the Region 5 office):

United States Environmental Protection Agency, Region 5, Air Enforcement Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Gina Smith, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–7018.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts 1 and 2 of title I of the (CAA) The USEPA has issued a "General Preamble" describing USEPA's review procedures for SIPs and SIP revisions submitted under title I of the CAA, including those State submittals for

ozone nonattainment areas (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). USEPA has also issued a draft guidance document describing the requirements for the emissions statement programs, entitled "Guidance on the Implementation of an Emissions Statement Program" (July, 1992).[1] It should be noted that this guideline has not been finalized, but does provide the best available guidance on the expected contents of the emissions statements and on the States' use of emissions statements. Further revisions to this draft guidance were not available prior to final rulemaking on the Ohio SIP revisions request. Therefore, it is appropriate to use the July 1992 draft guidance in considering current emissions statement SIP revision submittals.

A. Summary of the Federal Requirements

Section 182(a)(3)(B) of title I of the CAA requires States with areas designated nonattainment for the ozone NAAQS to establish regulations for annual reporting of actual emissions by sources that emit VOC or NO_X in the nonattainment areas. These annual emissions reports are called "emissions statements." Section 182(a)(3)(B) also requires the States to submit a revision to their SIP to incorporate the emissions statement requirement into its SIP no later than 2 years after enactment of the CAA.

A State, with USEPA approval, may waive the requirement for an emissions statement for classes or categories of sources with less than 25 tons per year of NO_X or VOC emissions in nonattainment areas if the State includes the classes or categories in the base year and periodic inventories and calculates emissions using emission factors established by USEPA (such as those found in USEPA publication AP–42) or other methods acceptable to USEPA. Whatever minimum reporting level the State establishes in its emissions statement program, if a source emits either VOC or NO_X at or above the designated reporting level, the other pollutant must be included in the emissions statement, even if it is emitted at levels below the specified cutoffs.

The CAA requires a facility to submit the first emissions statement to the State within three years after the date of enactment of the CAA, and annually thereafter. USEPA has requested the States to submit the emissions data to USEPA through the Aerometric Information Retrieval System (AIRS). The minimum emissions statement data must include: certification of data accuracy, source identification information, operating schedule, emissions information (to include annual and typical ozone season day emissions), control equipment information, and process rate data. The emissions reported in a source's statement should include upset emissions, the effect of downtime on emissions, and fugitive emissions. Finally, the State's rule should clearly place the burden for reporting on the source. The Technical Support Document, dated June 28, 1994, provides a more detailed description of the requirements of the August 4, 1993, memorandum. USEPA developed emissions statement data elements to be consistent with other State reporting requirements. This consistency is essential to assist States with quality assurance for emissions estimates and to facilitate consolidation of all USEPA reporting requirements.

In addition to the submission of the emissions statement data to AIRS, States should provide USEPA with a status report that outlines the degree ofcompliance with the emissions statement program. Beginning July 1, 1993, States should report quarterly to USEPA the total number of sources affected by the emissions statement provisions, the number of sources that have complied with the provisions and the number that have not. The status report should also include the total annual and typical ozone season day emissions from all reporting sources, both corrected and non-corrected for rule effectiveness. States should include in their status report a list of sources that: (1) Are delinquent in submitting their emissions statement; (2) emit 500 tons per year (tpy) or more of VOC; or (3) emit 2500 tpy or more of NO_X. The State should submit this status report quarterly until all the regulated sources have complied for the reporting year. Suggested submittal dates for the quarterly status reports are July 1, October 1, January 1, and April 1.

B. Summary of State Submittal

The CAA required States subject to the requirements of section 182(a)(3)(B) to submit the emissions statement program to USEPA by November 15, 1992. On January 15, 1993, the USEPA made a finding that Ohio failed to submit the required SIP revision. The USEPA's finding triggered the sanctions period of section 179 of the CAA. The Ohio Environmental Protection Agency (OEPA) submitted a SIP revision request to USEPA on March 22, 1994. In a letter dated May 16, 1994, the USEPA informed OEPA that the SIP submittal was complete. The May 16, 1994, letter stopped the sanctions period that was begun with the finding of failure to submit.

The information provided by the State included: Adopted rules (3745–24–01, –02, –03, and –04) effective on April 1, 1994; emissions statement form and synopsis of rules; summary of comments and responses; public notice of the hearing and comment period; Joint Committee on Agency Rule Review (JCARR)agenda and approval; technical support for the research and development (R&D) exemption; statutory authority for the State's rules; and copies of actual comments submitted. OEPA submitted four adopted rules. The first, Rule 3745–24–01, is entitled *Definitions*. Unless otherwise provided in this rule the definitions in rule 3745–24–01 apply.

The second rule, Rule 3745–24–02, which is entitled *Applicability*, states that the requirements of this chapter apply to facilities located in Ashtabula, Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Lake, Licking, Lorain, Lucas, Mahoning, Medina, Miami, Montgomery, Portage, Stark, Summit, Trumbull, Warren, or Wood County. Facilities emitting 25 tons or more of NO_X or 25 tons or more of VOC during any calendar year are required to submit an emissions statement. This requirement starts with calendar year 1992. Sources in counties redesignated to attainment for ozone are exempt from reporting. The rule also provides an exemption under paragraph (G) of Rule 3745–24–04 for certain sources at the facility.

Rule 3745–24–03, which is entitled *Deadlines for the Submission of the Emissions Statements*, requires that the 1992 emissions statements be submitted by July 1, 1994. For 1993 and beyond, emissions statements are due by November 15th of the following calendar year (e.g. November 15, 1994, for the 1993 emissions statement).

Ohio Rule 3745–24–04 is entitled *Emissions Statement Requirements* and involves paragraphs (A) through (G). Paragraphs (A) and (B) require effected owners to submit emissions statements in the OEPA format by the required deadline. Paragraph (C) contains general information about the facility, calendar year covered, and certification of accuracy of the statement. The certification of accuracy must be submitted by an appropriate facility

[1] Refer also to a memorandum from J. David Mobley, Chief, Emission Inventory Branch, Technical Support Division, USEPA, entitled "First Emission Statements Due to EPA/Essential Emission Statement Rule Elements," dated August 4, 1993.

official. Paragraph (D) lists required information for non-R&D sources. Paragraph (E) lists required information for R&D sources. Paragraph (F) allows emissions reporting on a group basis if it cannot be determined on an individual basis. Paragraph (G) provides exemptions for small sources and some R&D sources.

The emissions statement exemption provision, at Ohio Rule 3745–24–04(G), exempts emissions units that emit less than 10 pounds per day VOC or NO_X from being included in an emissions estimate for a facility. This exemption effects the applicability of the emissions statement requirement and the reported emissions for affected facilities. The exemption uses exemption 3704.011(A) from the State's title V Operating Permits program, but not 3704.011(A)(1) to (A)(5). Title V exemption 3704.011(A) exempts emissions units less than 10 pounds per day. Title V exemption 3704.011(A)(1) provides that section 3704.011(A) does not apply if the CAA or regulations issued pursuant to it limit an emission unit to less than 10 pounds per day. Title V exemption 3704.011(A)(2) provides that section 3704.011(A) does not apply if OEPA regulations needed for attainment limit the unit to less than 10 pounds per day. Title V exemption 3704.011(A)(3) provides that section 3704.011(A) does not apply if radionuclides are emitted. Title V exemption 3704.011(A)(4) provides that section 3704.011(A) does not apply if a unit in combination with other units would result in potential emissions greater than 25 tpy. Title V exemption 3704.011(A)(5) provides that section 3704.011(A) does not apply if a unit emits more than one ton per year of hazardous pollutants.

Ohio Rule 3745–24–04(G) also provides that Rule 3745–24–04(E) exempts from being included in an emissions statement any laboratory or bench scale R&D sources; and does not apply to R&D sources at a facility where the combined potential to emit is less than five tons VOC and five tons NO_X and where the owner or operator maintains records to demonstrate this. Since Rule 3745–24–04(G) only adopts the exemption outlined in 3704.011(A) of the title V program, the emissions from sources that total less than or equal to 10 pounds per day are not required to be reported in an emissions statement.

C. Analysis of State Submittal

The August 4, 1993, Mobley memorandum requires that sources submit their first statements for 1992 by July 1, 1993 and that subsequent statements be issued by April 15 of each year. However, the CAA allows statements to be submitted by November of each year. Ohio did not promulgate administrative rules for the emissions statement program until March 17, 1994. The rules became effective on April 1, 1994. Sources subject to the program are required to submit their initial emissions statement, summarizing 1992 emissions, by July 1, 1994. The 1993 emissions statement should be submitted by November 1994, and each subsequent statement should be submitted by November of each year. The States emissions statement reporting frequency satisfies USEPA's requirements.

USEPA requires the following operating information to be included in the State's rules: percent annual throughput by season; days per week on the normal operating schedule; hours per day during the operating schedule; and hours per year during the normal operating schedule. Ohio's rule requires sources to provide the weeks per year it operates as opposed to the hours per year. In addition, Ohio requires sources to report the hours per day, days per week, and weeks per year of operation. This is acceptable since USEPA can determine the hours per year a source operates from this information.

Ohio's rules do not require sources to report peak ozone season, annual throughput, and percent annual throughput by season. USEPA can determine the peak ozone season process rate from the information required by Ohio's rule.

As discussed in the Technical Support Document, Ohio's rules satisfy USEPA's guidance to require appropriate information on source location, operating rules, and process rates. Emissions statements submitted by sources must be certified by an appropriate official as accurate.

Ohio's rules do not require that the Airs Facility Subsystem (AFS) control equipment codes and the AFS estimated emissions method codes be provided. The rules do, however, require that a description of the existing control equipment, its efficiency, and the emissions estimation method be provided. The AFS codes can be determined from this information. Therefore, Federal requirements for control equipment information are satisfied.

Ohio Rules 3745–24–04(G) exempt sources that emit less than 10 pounds per day of VOC or NO_X. Initially, USEPA objected to this provision since it is not specifically provided for under the CAA. USEPA has recently reviewed the Columbus ozone emissions inventory provided by Ohio and concluded that the inventory demonstrates that the exemption would not exclude a significant portion of the area's emissions. The point source VOC and NO_X emissions total 4030 tpy and 4543 tpy, respectively. Exempted emissions amount to only 4.6 tpy (0.11%) and 0 tpy for VOC and NO_X, respectively. Exempted emissions for the other nonattainment areas are expected to be of a similar magnitude. Since exempted emissions do not represent a significant amount of the State's nonattainment area emissions, the USEPA believes that the provisions of 3745–24–04(G) are approvable.

II. Final Action

USEPA is approving Ohio's emissions statement program SIP submittal through the Agency's direct final rulemaking provisions. This rule will be effective December 12, 1994 unless notice is received that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**. The Ohio Emissions Statement Program (Ohio Administrative Rules 3745–21–01, 3745–21–02, 3745–21–03, and 3745–21–04) are being incorporated by reference into the Ohio SIP for ozone. The rules are available for inspection at: Air Docket 6102, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

III. Procedural Background

This action is being taken without prior proposal because the changes are believed to be noncontroversial and USEPA anticipates no significant comments on them. The public is advised that this action will be effective December 12, 1994, unless notice is received by November 14, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Administrator for the Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional

Administrators). A future document will inform the general public of these tables. Under the revised tables, this action remains classified as Table 3.

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted arequest for permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request remains in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA should 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, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities includesmall businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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 December 12, 1994. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any smallentities 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 the State action. The CAA forbids USEPA to base it actions concerning SIPS on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 13, 1994.

David Kee,

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 KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(100) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(100) On March 22, 1994, the Ohio Environmental Protection Agency submitted a revision request to Ohio's ozone SIP for approval of the State's emissions statement program. The emissions statement program requirements apply to sources in the following counties: Ashtabula, Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Lake, Licking, Lorain, Lucas, Mahoning, Medina, Miami, Montgomery, Portage, Stark, Summit, Trumbull, Warren, and Wood.

(i) Incorporation by reference.

(A) Ohio Administrative Code rules 3745–24–01, 3745–24–02, 3745–24–03, and 3745–24–04, effective April 1, 1994.

[FR Doc. 94–25270 Filed 10–12–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–22; RM–8438]

Radio Broadcasting Services; Jackson, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Roosevelt Gremillion, allots Channel 283A to Jackson, Louisiana. See 59 FR 13919, March 24, 1994. Channel 283A can be allotted to Jackson, Louisiana, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 283A at Jackson are 30–50–18 and 91–13–00. With this action, this proceeding is terminated.

DATES: Effective November 21, 1994. The window period for filing applications will open on November 21, 1994, and close on December 7, 1994.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–22, adopted September 30, 1994, and released October 7, 1994. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 283A, at Jackson.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–25308 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–228; RM–8295]

Radio Broadcasting Services; Tawas City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Tuesday, September 13, 1994 (59 FR 46932).

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the open window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on September 13, 1994 of the final regulations, which were the subject of FR Doc. 94–22522 is corrected as follows:

On page 46932, in the third column, in the "DATES" section, the open window period for filing applications should be "October 21, 1994" in lieu of "October 24, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–25239 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–39; RM–8452]

Radio Broadcasting Services; Roseau, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Tuesday, September 13, 1994 (59 FR 46932).

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the open window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on September 13, 1994 of the final regulations, which were the subject of FR Doc. 94–22519 is corrected as follows:

On page 46932, in the second column, in the "DATES" section, the open window period for filing applications should be "October 21, 1994" in lieu of "October 24, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–25236 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–283; RM–8374]

Radio Broadcasting Services; Pillager, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Tuesday September 13, 1994 (59 FR 46933).

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the open window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on September 13, 1994 of the final regulations, which are the subject of FR Doc. 94–22523 is corrected as follows:

On page 46933, in the first column, in the "DATES" section, the open window period for filing applications should be "October 21, 1994" in lieu of "October 24, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–25240 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–24; RM–8440]

Radio Broadcasting Services; Bozeman, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Tuesday, September 13, 1994 (59 FR 46930).

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the open window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on September 13, 1994 of the final regulations, which were the subject of FR Doc. 94–22518 is corrected as follows:

On page 46930, in the third column, in the "DATES" section, the open window period for filing applications should be "October 21, 1994" in lieu of "October 24, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–25235 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–157; RM–7462, RM–8184]

Radio Broadcasting Services; Cleveland, Belzoni, and Durant, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: This document contains a correction to the final regulation document which was published Tuesday, September 13, 1994 (59 FR 46931).

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the open window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on September 13, 1994 of the final regulations, which were the subject of FR Doc. 94–22521 is corrected as follows:

On page 46931, in the first column, in the "DATES" section, the open window period for filing applications should be "October 21, 1994" in lieu of "October 24, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–25238 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–17; RM–8437]

Radio Broadcasting Services; Jefferson City, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Tuesday, September 13, 1994 (59 FR 46931).

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the open window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on September 13, 1994 of the final regulations, which were the subject of FR Doc. 94–22517 is corrected as follows:

On page 46931, in the third column, in the **"DATES"** section, the open window period for filing applications should be "October 21, 1994" in lieu of "October 24, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–25234 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–275; RM–8373]

Radio Broadcasting Services; Pioche, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Keith E. Lamonica, allots Channel 255A to Pioche, Nevada, as the community's first local aural transmission service. See 58 FR 63320, December 1, 1993. Channel 255A can be allotted to Pioche in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 37–55–47 and West Longitude 114–27–05. With this action, this proceeding is terminated.

DATES: Effective November 21, 1994. The window period for filing applications will open on November 21, 1994, and close on December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–275, adopted September 30, 1994, and released October 7, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

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 Nevada, is amended by adding Pioche, Channel 255A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–25307 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–248; RM–8105]

Radio Broadcasting Services; Southern Shores, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Joseph A. Booth, allots Channel 265C2 to Southern Shores, NC, as the community's first local aural transmission service. See 57 FR 55502, November 25, 1992. Channel 265C2 can be allotted to Southern Shores without the imposition of a site restriction, at coordinates North Latitude 36–06–30 and West Longitude 75–43–20. Final action on applications for a construction permit may be withheld until Station WKJA at Belhaven, NC, is licensed at the coordinates specified in its outstanding construction permit (BPH–861103IG). With this action, this proceeding is terminated.

DATES: Effective November 21, 1994. The window period for filing applications will open on November 21, 1994, and close on December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 920248, adopted September 30, 1994, and released October 7, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

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 North Carolina, is amended by adding Southern Shores, Channel 265C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–25306 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–49; RM–8446]

Radio Broadcasting Services; Commerce, OK and Neosho, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Tuesday, September 13, 1994 (59 FR 46932).

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Shifflett, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the open window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on September 13, 1994 of the final regulations, which were the subject of FR Doc. 94–22520 is corrected as follows:

On page 46932, in the first column, in the **DATES** section, the open window period for filing applications should be "October 21, 1994" in lieu of "October 24, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–25237 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket Nos. 92–266 and 93–215, FCC 94–234]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Fifth Order on Reconsideration to revise certain cable regulations affecting small cable operators. Small operators now will be permitted a total of 90 days after their initial date of regulation to complete and submit required rate justification forms and provide to subscribers advance notification of service and equipment changes. Furthermore, small operators may make their initial basic tier rates, established in accordance with the Commission's revised rate regulations, effective on 30-days notice without prior approval from their local franchising authority. If, upon subsequent examination of a rate justification, a local franchising authority or the Commission finds that a small operator has implemented rates in excess of the maximum permitted rate, refunds may be ordered in accordance with the Commission's regulations. These actions will provide small cable operators with the administrative flexibility needed to comply properly with the Commission's rate regulations.

The Commission also has adopted a Further Notice of Proposed Rulemaking, which may be found elsewhere in this Federal Register.

EFFECTIVE DATE: November 16, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Cosentino, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Fifth Order on Reconsideration in MM Docket No. 92–266 and MM Docket No. 93–215, FCC 94–234, adopted September 12, 1994 and released September 26, 1994.

The complete text of this Fifth Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Fifth Order on Reconsideration

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), the Commission has established a comprehensive regulatory framework governing rates for regulated cable services and equipment. Under that framework, all regulated cable systems generally must set rates based on a 17 percent competitive rate reduction from September 30, 1992 levels unless the system is (1) eligible for temporary transition relief, (2) is eligible for temporary streamlined rate relief, or (3) justifies rates based on a cost-of-service showing.

The 1992 Cable Act requires the Commission to reduce regulatory burdens on small systems. Small systems are defined in the statute as systems serving 1,000 or fewer subscribers. Pursuant to that mandate, the Commission's regulatory framework governing regulated cable services incorporates several features designed to reduce administrative burdens on small systems. These small systems may elect to make streamlined rate reductions. unbundle charges for regulated equipment based on their average equipment costs, make use of a streamlined cost-of-service showing, or opt for transitional rate relief. Small cable operators also may elect transitional rate relief. Small operators are defined as operators serving 15,000 or fewer subscribers who are not affiliated with a larger operator.

Under the Commission's rules, cable operators must file a rate justification or cost-of-service showing for regulated service and equipment, within 30 days of the initial date of regulation. All cable operators are required to have rates and service offerings that comply with our rules on the initial date of regulation. Operators with equipment or service charges that exceed permitted levels are subject to refund liability. As indicated. the 1992 Cable Act requires the Commission to reduce administrative burdens for small systems. We believe this statutory purpose would be furthered by permitting small operators a brief period of time to restructure and establish rates and service offerings that comply with our rules after a tier becomes regulated, rather than require them to be in compliance with rate rules on the initial date of regulation.

We take these actions on reconsideration on our own motion. Petitions for reconsideration in Dockets MM 92–266 and 93–215 addressing other aspects of our rate rules remain pending and will be addressed in subsequent Orders. We take up these issues on our own motion in order to establish additional relief for small systems as required by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 543.

In the Rate Freeze Order, the Commission stated that it would consider lifting the freeze for a particular cable system if it could demonstrate that the freeze would impose severe economic hardship or threaten the viability of continued cable service. See Rate Freeze Order, MM Docket No. 92–266, FCC 93–176, 8 FCC Rcd 2921, 58 Fed. Reg. 17530 (April 5, 1993). The Commission later denied Fidelity Cablevision, Inc.'s request for a waiver of the rate freeze for, among other things, failing to show that foreclosure proceedings had been, or would have been, initiated as a result of the rate freeze. See Order in the Matter of Fidelity Cablevision, Inc. Petition for Emergency Relief, FCC 93–445, 9 FCC Rcd 2629 (1993). In a July 28, 1994 letter, Jere W. Glover, Chief Counsel for Advocacy of the Small Business

Administration, wrote to Chairman Reed E. Hundt that "[p]roviding assistance at the time of bankruptcy or other type of loan foreclosure is too little assistance too late."

In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 93–215, the Commission made available hardship rate relief for an operator that concludes that the benchmark/cost-of-service regulations threaten its financial health or ability to provide cable service. See Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 93–215, FCC 94–39, summarized at 59 Fed. Reg. 17975 (April 15, 1994). Such relief does not require a showing that foreclosure or bankruptcy proceedings have been or would be imminently initiated, and continued cable service need not be in jeopardy. An important factor in assessing any hardship showing will be the operator's ability to meet costs, including costs associated with capital improvement and debt service. We recognize that there are differences among cable operators based on system size, and that small operators may experience greater difficulty in assembling documentation to make a hardship showing. Therefore, we would expect that a small operator could rely on existing data rather than expending resources on obtaining an independent analysis of its financial situation. Furthermore, the Commission recognizes that for those operators facing financial challenges, time is of the essence. The Commission will work as expeditiously as possible to resolve any request for hardship rate relief filed.

This will reduce administrative burdens on small operators by assuring that they will not need to undertake the steps associated with establishing restructured rates and service offerings that comply with our rules, including completion of FCC forms, until they are actually regulated. Moreover, this additional time to comply will not harm cable subscribers because, under transition relief, small operators are not required in any event to make competitive rate reductions pending the Commission's cost studies, but may set rates based on March 31, 1994 levels with some adjustments. Accordingly, we conclude that establishing a period of time after regulation begins for small operators to comply will further statutory purposes without injuring consumers.

We believe that 90 days after the initial date of regulation is an appropriate period of time for small operator to establish rates and service offerings that comply with our rules. Accordingly, we will revise our rules to provide that small operators are not required to establish rates and service offerings that comply with our rules for 90 days after the initial date of regulation. In addition, in order to assure that this will reduce administrative burdens, we are changing our rules to provide that small operators do not need to file necessary rate justification forms with the local franchising authority, or the Commission, until 60 days after the initial date of regulation. However, we are not altering our rules concerning provision of advance notice to subscribers. Pursuant to those rules, all operators, including small operators, must give 30-days notice to subscribers prior to implementing rate and service changes.

Additionally, small systems and small operators may make their initial basic tier rates, established in accordance with the Commission's revised rate regulations, effective on 30-days notice without prior approval from their local franchising authority. If, upon subsequent examination of a rate justification, a local franchising authority or the Commission finds that a small operator or small system has implemented rates in excess of the maximum permitted rate, refunds may be ordered in accordance with our regulations.

Administrative Matters

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601–12, the Commission's final analysis with respect to the Fifth Order on Reconsideration is as follows:

Need and purpose of this action. The Commission, in compliance with section 3(i) of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to rate regulation, adopts rules and procedures intended to ensure cable subscribers of reasonable rates for cable services with minimum regulatory and administrative burden on cable entities.

Sumary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration filed comments in the original rulemaking order ("SBA"). The Commission addressed the concerns raised by the SBA in the First Report and Order, MM Docket No. 92–266, FCC 93–177. The SBA filed reply comments in MM Docket No. 93–215 and the Small Cable Business Association filed reply comments in MM Docket No. 92–266. Those comments will be reviewed as part of the instant Further Notice of Proposed Rulemaking.

Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission responded to these comments in previous Orders in these dockets. Although the Commission is issuing this Fifth Order on Reconsideration on its own motion, the Commission has attempted to accommodate commenters' concerns and to reduce administrative burdens by providing an additional period of time for small cable operators to comply with the rate regulations.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirements on the public.

Ordering Clauses

Accordingly, *it is ordered* That, pursuant to sections 4(i), 4(j), 303(r), 612, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 532, and 543 the rules, requirements and policies discussed in this Fifth Order on Reconsideration *is adopted* and Section 76.934 of the Commission's rules, 47 CFR Section 76.934, *is amended* as set forth below.

It is further ordered That, the Secretary shall sent a copy of this Fifth Order on Reconsideration including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq. (1981).*

It is further ordered, That, the requirements and regulations established in this decision shall become effective November 16, 1994.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Section 76.934 is amended by revising the section heading and adding paragraph (e) to read as follows:

§ 76.934 Small Systems and Small Operators.

* * * * *

(e) *Systems owned by Small Operators.* Systems owned by small operators as defined in Section 76.922(b)(4)(A) shall have 90 days from their initial date of regulation of a tier to bring their rates for that tier into compliance with the requirements of Sections 76.922 and 76.923. Such systems shall have sixty days from the initial date of regulation to file FCC Forms 1200, 1205, 1210, 1211, 1215, 1220 and/1225 and any similar forms as appropriate. Rates established during the 90-days period shall not be subject to prior approval by franchising authorities or the Commission, but shall be subject to refund pursuant to sections 76.942 and 76.961.

[FR Doc. 94–25023 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 100694B]

Atlantic Tuna Fisheries

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

ACTION: Closure.

SUMMARY: NMFS announces the closure of the fishery for Atlantic bluefin tuna (ABT) conducted by vessels permitted in the Harpoon Boat category. Closure is necessary because the annual quota for this category has been attained.

EFFECTIVE DATE: The closure is effective from 2330 hours local time on October 7, 1994 through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, 301–713–2347 or Raymond E. Baglin at 508–281–9140.

SUPPLEMENTARY INFORMATION: Regulations implemented under authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) pertaining to harvest of Atlantic tunas by persons and vessels subject to U.S. jurisdiction appear at 50 CFR part 285.

Section 285.22(b) of the regulations provides for an annual quota of 53 metric tons of large medium and giant size class ABT to be harvested from the Regulatory Area by vessels permitted in the Harpoon Boat category. The Assistant Administrator for Fisheries, NOAA (AA) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of ABT will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, ABT by the category of gear subject to the quotas.

Based on landing reports, the AA has determined that the quota of ABT allocated for the Harpoon Boat category for 1994 will be attained by October 7, 1994. Fishing for, retention, possession, or landing of large medium or giant size class ABT by vessels in the Harpoon Boat category must cease at 2330 hours on October 7, 1994.

Classification

This action is taken under the authority of 50 CFR 285.20, and is exempt from E.O. 12866.

Dated: October 6, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–25316 Filed 10–7–94; 11:48 am]

BILLING CODE 3510–22–F

50 CFR Part 301

[Docket No. 9312335–4107; I.D. 100494A]

Pacific Halibut Fisheries

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

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: Areas 2C, 3A, and 3B: September 14, 1994, 12:00 noon, Alaska Daylight Time, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907-586-7221; William W. Stelle, Jr., telephone 206-526-6150; or Donald McCaughran, telephone 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 16

Areas 2C, 3A, and 3B Closed to Halibut Fishing

Preliminary tabulation of catch figures for the September 12–14, 1994, fishing period in Areas 2C, 3A, and 3B indicates that the season's catch in all three areas are close to their respective catch limits. While exact numbers are not yet available, it is apparent that not enough halibut will be available in any of the areas to allow an October fishing period. Therefore, all fishing in U.S. waters is now closed to halibut fishing for the remainder of 1994.

Dated: October 5, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–25281 Filed 10–12–94; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 663

[Docket No. 940254–4104; I.D. 100594D]

Pacific Coast Groundfish Fishery

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces that further processing at sea of Pacific whiting (whiting) off Washington and Oregon was prohibited at 2 p.m. local time Wednesday, October 5, 1994. This action was authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and was necessary to provide adequate amounts of whiting for shoreside processors and to achieve the allocations adopted for 1994.

DATES: Effective 2 p.m. (local time) October 5, 1994, through December 31, 1994. Comments will be accepted until November 14, 1994. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until November 14, 1994.

ADDRESSES: Submit comments to Mr. William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Mr. Rodney McInnis, Acting Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 663.23(b)(4) allocate whiting in 1994–1996 between fishing vessels that deliver at sea (catcher/processors and catcher boats delivering to motherships) and those that deliver shoreside (see the final rule published at 59 FR 17491, April 13, 1994). When 60 percent of the annual harvest guideline is taken, further at-sea processing is prohibited and the remaining 40 percent is reserved for use by vessels delivering shoreside. The portion of the harvest guideline that the shoreside sector will not use by the end of the year, will be made available for harvest by all fishing vessels, whether delivering shoreside or at sea, by August 15 or as soon as practicable thereafter. Whiting may be released at a later date if it becomes apparent that shore-based needs have been substantially overestimated (50 CFR 663.23(b)(4)(ii).

In 1994, the whiting harvest guideline is 260,000 metric tons (mt). Of this, 104,000 mt was set aside initially as a reserve for shoreside processing. At-sea processing of whiting was prohibited on May 13, 1994, when 60 percent (156,000 mt) of the harvest guideline was projected to be reached (59 FR 25832, May 18, 1994). Shore-based production was evaluated in early August. No whiting was determined to be surplus to shore-based needs, so no release was made on August 15, 1994.

Shore-based production was reevaluated in late September. The NMFS Regional Director, Northwest Region, determined that of the 38,000 mt of the harvest guideline remaining after September 25, 1994, 16,000 mt were surplus to shore-based needs. This surplus was made available for at-sea processing on October 1, 1994 (59 FR 50857, October 6, 1994), with the remaining 22,000 mt in reserve for shore-based processing.

The best available data on October 4, 1994 indicate that approximately 8,300 mt of whiting had been processed at sea through October 3, 1994, with a projected catch rate of 5,000 mt per day. At that rate, the 16,000–mt reserve release would be reached by 2 p.m. (local time) Wednesday, October 5, 1994. When the released amount is reached, or projected to be reached, further at-sea processing is prohibited.

The regulations at 50 CFR 663.23(b)(4)(iv) state that in order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken. The at-sea processing industry was advised of this action by "actual notice" on October 4, 1994, to avoid exceeding the limit for at-sea processing. This **Federal Register** notice confirms the action.

The Council will be informed by writing of this action.

Secretarial Action

For the reasons stated above, and in accordance with 50 CFR 663.23(b)(4)(iv), after 2 p.m. (local time) October 5, 1994, at-sea processing of whiting is prohibited (except for whiting that was on board the vessel prior to that time), and the taking and retaining, or receiving (except as cargo), of whiting by a vessel in the fishery management area with processed whiting on board is prohibited. Any vessel used to fish for whiting for processing at sea must have its trawl doors on board and attached to the trawl (50 CFR 663.7(o)).

Classification

The determination to prohibit further at-sea processing of Pacific whiting is based on the most recent data available. Those data are available for public inspection (see DATES and **ADDRESSES**). This action is taken under the authority of 50 CFR 663.23(b)(4)(iv) (added by final rule published at 59 FR 17493, April 13, 1994), and is exempt from review under E.O. 12866.

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

Dated: October 6, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–25315 Filed 10–7–94; 11:48 am]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 93199–4042; I.D. 100794B]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 62 (between 154° and 159° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1994 total allowable catch (TAC) for pollock in Statistical Area 62.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 10, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

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

In accordance with § 672.20(c)(1)(ii)(B), the 1994 TAC for pollock in Statistical Area 62 was established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 23,870 metric tons (mt). The fourth quarterly allowance of TAC for Statistical Area 62 became available at noon, October 1, 1994, pursuant to § 672.20(a)(2)(iv).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 TAC for pollock in Statistical Area 62 soon will be reached. The Regional Director established a directed fishing allowance of 23,000 mt, and has set aside the remaining 870 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 62 is prohibited, effective from 12 noon, A.l.t., October 10, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

Classification

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

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

Dated: October 7, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–25354 Filed 10–7–94; 1:51 pm]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 931199–4042; I.D. 100794C]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 63 (between 147° and 154° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1994 total allowable catch (TAC) for pollock in Statistical Area 63.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 10, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

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

In accordance with § 672.20(c)(1)(ii)(B), the 1994 pollock TAC for Statistical Area 63 was established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 56,000 metric tons (mt). The fourth quarterly allowance of that TAC for Statistical Area 63 became available at noon, October 1, 1994, pursuant to § 672.20(a)(2)(iv).

The Director, Alaska Region, NMFS, (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 TAC for pollock in Statistical Area 63 soon will be reached. The Regional Director established a directed fishing allowance of 55,000 mt, and has set aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 63 is prohibited, effective from 12 noon, A.l.t., October 10, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

Classification

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

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

Dated: October 7, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–25355 Filed 10–7–94; 1:51 pm]

BILLING CODE 3510–22–F

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043; I.D. 100794A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAC) of pollock for the inshore component in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 8, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the AI was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) and a subsequent reserve apportionment (59 FR 21673, April 26, 1994) as 18,324 metric tons (mt).

The Director of the Alaska Region, NMFS, (Regional Director) has determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the inshore component in the AI soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 17,124 mt after determining that 1,200 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the inshore component in the AI effective from 12 noon, A.l.t., October 8, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: October 7, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–25353 Filed 10–7–94; 1:51 pm]

BILLING CODE 3510–22–F

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043; I.D. 100694A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Pacific ocean perch TAC for the BS was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) as 1,624 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific ocean perch TAC in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 1,524 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in the BS. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the BS, effective from 12 noon, A.l.t., October 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: October 6, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–25317 Filed 10–7–94; 11:48 am]

BILLING CODE 3510–22–F

50 CFR Part 676

[I.D. 060994B and I.D. 033194E]

RIN 0648–AD19 and RIN 0648–AD80

Limited Access Management of Federal Fisheries In and Off of Alaska; Correction

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

ACTION: Correction to final rules.

SUMMARY: NMFS issues a correction to the effective date section of final rules published on August 24, 1994 and September 6, 1994. Portions of these final rules related to the limited access management of Federal fisheries in and off of Alaska.

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: On November 9, 1993 (58 FR 59375), NMFS published a final rule to implement Amendment 15 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (BSAI), Amendment 20 to the FMP for Groundfish of the Gulf of Alaska (GOA), and a regulatory amendment affecting the fishery for Pacific halibut in and off the State of Alaska. These regulations established an individual fishing quota limited-access system in fixed gear fisheries for Pacific halibut and sablefish in and off Alaska. In addition, this action implemented a Western Alaska Community Development Quota program for halibut and sablefish fixed gear fisheries. The effective date for the final rule was December 9, 1993, except §§ 676.20 (a) through (e) and (g) and 676.21, which became effective on January 1, 1994, and §§ 676.13 (a) and (b), 676.14, 676.16, 676.17, 676.20 introductory text and paragraph (f), and 676.22, 676.23, and 676.24, which will become effective on January 1, 1995.

On August 24, 1994, NMFS issued a final rule implementing Amendment 30 to the BSAI FMP and Amendment 34 to the GOA FMP and a regulatory amendment affecting Pacific halibut and sablefish fisheries in and off the State of Alaska. This final rule was effective September 23, 1994, but inadvertently amended § 676.24, which will not be in effect until January 1, 1995.

On September 6, 1994, NMFS issued a final rule to implement the North Pacific Fisheries Research Plan for the GOA groundfish fishery, BSAI management area groundfish fishery, BSAI king and Tanner crab fisheries, and Pacific halibut fishery in convention waters off Alaska. The final rule was effective October 6, 1994. In that rule §§ 676.13 and 676.16, which will be effective January 1, 1995, were inadvertently amended.

Correction of Publications

Accordingly, the publication on August 24, 1994 (59 FR 43502) and September 6, 1994 (59 FR 46126), which were the subject of FR Doc. 94–20820 and FR Doc. 94–21711, respectively, are corrected as follows:

The **EFFECTIVE DATE** caption of the final rule published on August 24, 1994, page 43502, the third column, is corrected to read as follows:

EFFECTIVE DATE: September 23, 1994, except the amendments to § 676.24, which will become effective January 1, 1995.

The **EFFECTIVE DATE** caption of the final rule published on September 6, 1994, page 46126, the first column, is corrected to read as follows:

EFFECTIVE DATE: October 6, 1994, except the amendments to §§ 676.13 and 676.16, which will become effective January 1, 1995.

Dated: October 5, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–25282 Filed 10–12–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 197
Thursday, October 13, 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. 92–CE–22–AD]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD), which would have superseded AD 91–08–01. That AD currently requires the following on Jetstream Aircraft Limited (JAL) Jetstream Model 3101 airplanes: revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS; and limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane. The previous notice proposed to provide the option of incorporating a flap system modification that would eliminate the requirements of AD 91–08–01. Since publication of that proposal, the Federal Aviation Administration (FAA) has re-examined all information related to this subject, and has determined that the flap system modification should be made mandatory rather than optional. The proposed actions are intended to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

DATES: Comments must be received on or before December 16 1994.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes 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 No. 92–CE–22– 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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Jetstream Model 3101 airplanes was published in the **Federal Register** on July 8, 1992 (57 FR 30174). That action proposed to supersede AD 91–08–01 with a new AD that would (1) retain the flap system operating revision and limitation currently required by AD 91–08–01; and (2) limit the applicability to only those airplanes that do not have the flap system modified in accordance with British Aerospace (BAe) Service Bulletin 27–JA 910541.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in agreement with the proposed AD and no comments were received concerning the FAA's determination of the cost upon the public.

Since issuing that action, the FAA has re-examined all available information on this issue, and has determined that the limitation of maximum flap setting of 20 degrees in icing conditions presents an unsafe condition in certain circumstances.

The Jetstream Model 3101 airplane has a feature known as "lift dump", which allows for proper deceleration by automatically extending flaps from the 50 degree position to the 70 degree position when the nose wheel strut is compressed during landing. When landing with a flap setting of 20 degrees, "lift dump" is not normally available, which can make deceleration more dependent upon propeller reverse or manual selection.

Propeller reverse is utilized in normal operation as an aid in reducing landing roll distance. The other option is manually selecting flaps from 20

degrees to 50 degrees immediately after touchdown while the airplane is traveling at a higher speed. When the operator selects the 50-degree position with all ground logic constraints satisfied, the flaps will extend to the 70-degree position. This technique can result in high aerodynamic loads upon the flap, which could cause structural damage that, if not detected and corrected, could result in loss of airplane directional control caused by failure of the flap system. Also, there is a temporary increase in wing lift when manually extending the wings from 20 degrees to 35 degrees, which could result in the airplane becoming airborne or a reduction of directional control and braking force.

Because "lift dump" is available with the flaps at the 35-degree position during landing, the FAA has determined that (1) the flap system modification that allows the use of flaps at 35-degrees with ice visible should be incorporated; and (2) AD action should be taken to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

Since incorporating the 35 degrees flap modification into the notice of proposed rulemaking specifies additional procedures that go beyond the scope of what was originally proposed, the notice has been revised accordingly and the comment period has been reopened to provide additional time for public comment. The proposed AD would supersede AD 91–08–01 with a new AD that would (1) retain the flap system operating revision and limitation currently required until the 35-degree flap system modification was incorporated; and (2) eventually require incorporating the 35-degree flap system modification in accordance with the instructions in Jetstream Aircraft Limited SB No. 27–JA 910541, which consists of the following pages:

Page Nos.	Revision level	Date
2, 5 through 30 and 33 through 45.	Revision 1	November 11, 1991.
31	Revision 2	February 4, 1992.
1, 3, 4, and 32.	Revision 3	November 16, 1992.

The FAA estimates that 141 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 23 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $55 an hour. The manufacturer will provide parts at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $194,580. This figure is based on the assumption that no affected owner/operator has incorporated the proposed modification.

Jetstream Aircraft Limited has informed the FAA that 122 modification kits have been delivered to affected airplane owners/operators. Since each of these airplane operators have incorporated revised flight manual supplements, the FAA assumes that each of these kits is installed on one of the affected airplanes. With this in mind, the proposed cost impact upon U.S. operators would be reduced $168,300 from $194,580 to $26,220. In addition, Jetstream Aircraft Limited informed the FAA that the other 19 affected airplanes are in the storage inventory of their sister company JSX. The policy of JSX is to incorporate this modification before distributing one of the affected airplanes to an operator. Taking these factors into consideration, the proposed AD would provide no economic cost impact upon U.S. operators.

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 action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–08–01, Amendment 39–7007 (56 FR 24333, May 30, 1991), and adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 92–CE–22–AD. Supersedes AD 91–08–01, Amendment 39–7007.

Applicability: Jetstream Model 3101 airplanes (all serial numbers), certificated in any category, that do not have the flap system modified in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Aircraft Limited Service Bulletin (SB) 27–JA 910541, which consists of the following pages and revision levels:

Page Nos.	Revision level	Date
2, 5 through 30 and 33 through 45.	Revision 1	November 11, 1991.
31	Revision 2	February 4, 1992.
1, 3, 4, and 32.	Revision 3	November 16, 1992.

Note 1: Compliance with a different revision level of the above-referenced service bulletin fulfills the applicable requirements of this AD.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after June 10, 1991 (the effective date of superseded AD 91–08–01), accomplish the following:

(1) Modify the operating limitations placards located on the flight deck in accordance with Jetstream Alert SB No. 27–A–JA 910340, dated March 25, 1991. This modification will limit the maximum flap extension speed at the 50-degree position to 130 knots indicated airspeed (KIAS).

(2) Insert a copy of this AD into the limitations section of the airplane flight manual.

(b) Within the next 25 hours TIS after June 10, 1991 (the effective date of superseded AD 91–08–01), accomplish the following:

(1) Fabricate a placard with the words "Do not extend the flaps beyond the 20-degree position if ice is visible on the airplane and ensure that the landing gear selector is down prior to landing." Install this placard on the airplane's instrument panel within the pilot's clear view. Parts of the airplane where ice

could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(2) Operate the airplane in accordance with BAe CAA-Mandatory Alert Service Bulletin 27–A–JA 910340, dated March 25, 1991, Section 2.B.–Instruction for Aircraft Operations, paragraphs (1)(a) and (1)(c) until Amendments P/32, P/49, and P/52 have been received. Upon receipt, incorporate these amendments into Airplane Flight Manual (AFM) HP.4.10. Ensure that Amendment G/10 is incorporated into AFM HP.4.10.

(c) Within the next 100 hours TIS after the effective date of this AD, incorporate the 35-degree flap modification (Amendment JA 910541) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Aircraft Limited SB 27–JA 910541.

(d) The actions required by paragraphs (a) and (b) of this AD may be terminated when the flap system is modified in accordance with Jetstream Aircraft Limited SB 27–JA 910541.

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

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 91–08–01, Amendment 39–7007.

Issued in Kansas City, Missouri, on October 5, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–25289 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–14–AD]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) HP137 Mk1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 81–09–03 R1, which currently requires repetitively inspecting the rudder pedal adjusting mounting bracket for cracks on Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream series 200 airplanes, and replacing any cracked bracket. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate, or in certain instances, reduce the number of repetitions of certain short-interval inspections when improved parts or modifications are available. The proposed action would require replacing the mounting bracket with a new mounting bracket of improved design as terminating action for the repetitive inspections that are currently required by AD 81–09–03 R1. The actions specified in the proposed AD are intended to prevent inadvertent rudder movement caused by a cracked rudder pedal adjusting mounting bracket, which could result in loss of rudder control.

DATES: Comments must be received on or before December 16, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes 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 No. 94–CE–14–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate, or in certain instances, reduce the number of repetitions of those critical inspections. In determining what inspections are

critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA recently conducted a review of existing AD's that apply to JAL HP137 Mk1 and Jetstream series 200 airplanes. Assisting the FAA in this review were (1) the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom; (2) JAL; (3) the Regional Airlines Association (RAA); and (4) several U.S. and foreign operators of the affected airplanes.

From this review, the FAA has identified AD 81–09–03 R1, Amendment 39–4150, as one that should be superseded with a new AD that would require a modification that could eliminate the need for short-interval and critical repetitive inspections. AD 81–09–03 R1 currently requires repetitively inspecting the rudder pedal adjusting mounting bracket for cracks on Jetstream Aircraft Limited HP137 Mk1 and Jetstream series 200 airplanes, and replacing any cracked bracket.

JAL has developed Modification No. 5162, which introduces a new rudder pedal adjusting mounting bracket with increased sectional dimension, part number (P/N) 1379111E 1. Included with this modification are Instructions to Modification No. 5162, Part 1 and Part 2, Issue 1, dated June 1981.

As a result of the previously discussed AD review, the CAA listed the actions specified in the referenced service instructions as mandatory with CAA AD 003–07–81 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

Based on its aging commuter-class aircraft policy and after reviewing all available information including that received from the CAA, the FAA has determined that AD action should be taken to (1) eliminate the repetitive short-interval inspections required by AD 81–09–03 R1, Amendment 39–4150; and (2) continue preventing inadvertent rudder movement caused by a cracked rudder pedal adjusting mounting bracket, which could result in loss of rudder control.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1 and Jetstream series 200 airplanes of the same type design, the proposed AD would supersede AD 81–09–03 R1 with a new AD that would (1) retain the inspections of the rudder pedal adjusting mounting bracket for cracks and require replacing any cracked part as required by the current AD; and (2) require replacing this mounting bracket with an improved part of increased sectional dimension, P/N 1379111E 1, as terminating action for the repetitive inspections. The proposed inspection would be accomplished in accordance with Jetstream Service Bulletin No. 9/10, dated April 28, 1981. The proposed replacement would be accomplished in accordance with the Instructions to Modification No. 5162, Part 1 and Part 2, Issue 1, dated June 1981.

The FAA estimates that 11 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 160 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,800 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $116,600.

All 11 of the affected airplanes are HP137 Mk1's; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation or anywhere near operating condition. For this reason, JAL no longer stocks Modification No. 5162, but can develop modification kits within three months after order. Since there are no airplanes currently in operation, the cost impact of the proposed AD would be narrowed to only those owners/operators returning their airplane to operation.

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 action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 81–09–03 R1, Amendment 39–4150, and by adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 94–CE–14–AD. Supersedes AD 81–09–03 R1, Amendment 39–4150.

Applicability: HP137 Mk1 and Jetstream Series 200 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent inadvertent rudder movement caused by a cracked rudder pedal adjusting mounting bracket, which could result in loss of rudder control, accomplish the following:

(a) Within the next 100 hours time-in-service, unless already accomplished (compliance with AD 81–09–03 R1), inspect the rudder pedal adjusting mounting bracket for cracks in accordance with Jetstream Service Bulletin (SB) No. 9/10, dated April 28, 1981.

(1) If cracks are found, prior to further flight, replace the mounting bracket with an improved part of increased sectional dimension, part number (P/N) 1379111E 1, in accordance with the Instructions to Modification No. 5162, Part 1 and Part 2, Issue 1, dated June 1981.

This replacement is referenced as Modification No. 5162.

(2) If no cracks are found, reinspect at intervals not to exceed 100 hours TIS until Modification No. 5162 is incorporated.

(b) Upon the accumulation of 15,000 hours TIS or within the next 200 hours TIS, whichever occurs later, replace the rudder pedal adjusting mounting bracket with an improved part of increased sectional dimension, P/N 1379111E 1 (Modification No. 5162), in accordance with the Instructions to Modification No. 5162, Part 1 and Part 2, Issue 1, dated June 1981.

(c) Incorporating Modification 5162 as specified in paragraph (a)(1) or (b) of this AD eliminates the repetitive inspection requirement of this AD.

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

(e) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

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

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 5, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–25292 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–16–AD]

Airworthiness Directives; Jetstream Aircraft Limited (formerly British Aerospace, Regional Airlines Limited) HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to adopt a new airworthiness directive that would apply to Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The proposed action would require repetitively inspecting the passenger/crew cabin door handle mounting platform structure for cracks, and, if found cracked, replacing with a structure of improved design as terminating action for the repetitive inspections. Cracks found on this structure on two of the affected airplanes prompted the proposed action. The proposed actions are intended to prevent the inability to open the passenger/crew door because of a cracked internal handle mounting platform structure, which could result in passenger injury if emergency evacuation was needed.

DATES: Comments must be received on or before December 16, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes 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 No. 94–CE–16–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reports two incidents of passenger/crew cabin door handle mounting platform structure cracking.

This condition, if not detected and corrected, could result in the inability to open the passenger/crew door and

possible passenger injury if emergency evacuation was needed.

Jetstream Aircraft Limited has issued Service Bulletin 52–A–JA 930901, Revision 1, dated February 11, 1994, which specifies procedures for inspecting and replacing the passenger/crew internal door handle mounting platform structure on JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory in the United Kingdom is equivalent to the FAA issuing an airworthiness directive in the United States.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of the same type design, the proposed AD would require repetitively inspecting the passenger/crew cabin door handle mounting platform structure for cracks, and, if found cracked, replacing with a structure of improved design as terminating action for the repetitive inspections. The proposed actions would be accomplished in accordance with the service information described above.

The FAA estimates that 165 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed modification, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,800. This figure does not take into account any possible passenger/crew door internal handle mounting platform structure replacements nor repetitive inspections. The FAA has no way of determining how many of these structures may have cracks or the number of repetitive inspections each owner/operator may incur.

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 action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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 a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 94–CE–16–AD. Applicability: HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category. Compliance: Required upon the accumulation of 1,800 hours TIS or within the next 100 hours time-in-service (TIS) after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated.

To prevent the inability to open the passenger/crew door because of cracked internal handle mounting platform structure, which could result in passenger injury if emergency evacuation was needed, accomplish the following:

(a) Inspect the passenger/crew door internal handle mounting platform structure for cracks in accordance with Part 1 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 52–A-JA 930901, Revision 1, dated February 11, 1994 .

(1) If any cracked structure is found, prior to further flight, replace the mounting platform structure with a new structure, part number 137450C23, in accordance with Part 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 52–A-JA 930901, Revision 1, dated February 11, 1994.

(2) If no cracks are found, reinspect the mounting platform structure at intervals not to exceed 1,800 hours TIS until a part number 137450C23 mounting platform structure is installed.

(b) The repetitive inspections required by this AD may be terminated upon installing a part number 137450C23 passenger/crew door internal handle mounting platform structure. This installation may be accomplished regardless of whether the existing structure is cracked.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 5, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–25293 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–U

Office of the Secretary

14 CFR, Parts 380, 381, 399

[Docket No. 49385; Notice 94–16]

RIN 2105–AC03

Special Event Tours

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department seeks comment on a proposal to expand its rules on Super Bowl tours to cover air tours to other types of special events. These Super Bowl rules require that operators of Super Bowl tours that are promoted as including game tickets must have those game tickets in hand or under contract before they advertise or sell the tours, and that they must refund the entire tour price to any customer who does not receive a promised game ticket. This proposed rule would also extend the charter rule's prohibition on last-minute price increases to non-charter tours to special events. This initiative arises as a result of problems on certain tours to the 1994 Rose Bowl on which participants did not receive game tickets that were promoted as being included in the package, or were required to make additional payments in order to receive tickets.

DATES: Comments should be received by November 14, 1994. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk/C–55, Docket No. 49385, Room 4107, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide an original and three copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Tim Kelly, Consumer Affairs Division/I–25, Office of the Secretary, Room 10405, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366–5952.

SUPPLEMENTARY INFORMATION: In conjunction with the Rose Bowl football game that was played in Pasadena, California on January 1, 1994, a large number of fans of the University of Wisconsin (one of the two teams participating in the game) purchased package tours to California. Many of those tours were promoted as including a ticket to the Rose Bowl game. However, a significant number of these individuals either did not receive the game tickets that they had been promised and did not gain admission to the game, or were required to make an additional payment after they arrived in Pasadena in order to obtain their tickets. The Department is seeking comment on a proposal to extend its rules on Super Bowl tours to include air tours to other types of special events where admission to the event is advertised as being included in the package.

The Department's rules on Super Bowl charters are contained in title 14, part 380 of the Code of Federal Regulations (14 CFR part 380):

- Section 380.2 defines a Super Bowl charter as a charter flight that is represented by its charter operator as including tickets to the National Football League's Super Bowl game as part of its ground package.
- Section 380.18a states that a Super Bowl charter may not be advertised unless the operator has submitted verification to the Department [1] that the operator (1) is in physical possession of enough Super Bowl game tickets to provide them for a substantial number of seats on the charter, or (2) has a contract with the NFL or with an NFL team for such a number of game tickets, or (3) has a contract with another person who has a contract with the NFL or an NFL team for such a number of game tickets.
- Section 380.18a also states that a Super Bowl charter may not be sold unless the operator has submitted verification to the Department that the operator has possession of, or contracts for, enough game tickets to provide one to every person who is to receive one under the terms of the operator/participant contract for the charter.
- Section 380.31(c) states that if an operator receives a booking for which he or she does not have possession of or a contract for a game ticket, the operator must return that participant's money within 3 days, unless the participant has authorized the operator in writing to retain the payment while the operator seeks additional tickets.
- Sections 380.32(s), 380.33(a)(5) and 380.33(e) state that if Super Bowl game tickets are not supplied when promised, the affected participant must be sent a refund of the price of the entire charter package within 14 days after the return flight.

These rules came about following problems with game tickets for Super Bowl tours in the late 1970's (see 45 FR 1856, January 9, 1980). The rules were limited to the Super Bowl because that was the only event where such problems had surfaced.

In addition to the Super Bowl rules in Part 380, the Department has a policy statement at 14 CFR 399.87 which states that it shall be an unfair or deceptive practice within the meaning of section 411 of the Federal Aviation Act (now 49 U.S.C. 41712) to advertise or sell an air tour that is promoted as including a ticket to the Super Bowl game unless the operator has tickets or contracts for tickets in the manner described in 14 CFR 380.18a (see above). The principal purpose of this policy statement is to reach tours operated on scheduled air service, which are not covered by the part 380 charter rules. The part 399 policy statement mirrors § 380.18a, but does not include the other part 380 provisions described above. Most importantly, it does not include the requirement that the entire tour price be refunded if a game ticket is not provided.

On January 27, 1994, the Department issued an Advance Notice of Proposed Rulemaking in this proceeding (published February 1, 1994; 59 FR 4614). In this notice, we stated that we were tentatively proposing to issue a new rule that would contain the procedures of the Super Bowl provisions of both part 380and part 399, and to extend this rule to other types of events. Like current § 399.87, the new rule would apply to tours on all forms of air transportation, not just charters. Like the existing Super Bowl charter rules in part 380, the new regulation would require the tour operator to refund the entire tour price to any participant who does not receive a promised event ticket, even if the tour were not on a charter. The proposed rule would also pick up the procedures of § 380.31(c) of the charter rule, which requires an operator to refund any money received for a booking within 3 days if the operator has no contract for an event ticket for that person, unless the person has authorized the operator in writing to retain the payment while the operator seeks a ticket.

In addition to setting out the Department's tentative rulemaking proposal, the January ANPRM asked

[1] References to "the Board" in Part 380 refers to the Civil Aeronautics Board, the Department's predecessor in aviation economic and consumer matters. The Department of Transportation now administers this rule as authorized by the Civil Aeronautics Board Sunset Act of 1984 (P.L. 98–443; 98 Stat. 1703).

commenters to address a number of questions about the types of issues that such a rule should apply to. The discussion of the comments that appears below is organized according to those questions.

Comments

The Department received comments from 11 organizations and 7 individuals. The great majority of the comments favored adoption of a rule in this area.

Q. Should the rule apply only to major sports events which would be listed in the rule (for example, the Super Bowl, college bowl games, the NCAA Final Four, the World Cup finals, the Olympics)? To any sports event? To religious events (for instance, the Passion Play in Oberammergau)? To any event?

Several of the comments discussed only sports events as the context for the rule. The National Collegiate Athletic Association (NCAA) recommended applying the rule to the Division I Final Four men's and women's basketball championships, the College World Series, and post-season college football bowl games. The Football Bowl Association (FBA), an organization representing all 19 post-season college football bowl games, also felt that all post-season football bowl games should be covered, and stated that it offered no comment on whether other events should or should not be covered. The National Hockey League (NHL) commented that the rule should apply to all major professional and amateur sports events. Ms. Sara Shea said that the Super Bowl rule should be expanded to include other special sporting events.

The Wisconsin Attorney General stated that the rule should not be limited to specifically named events, but perhaps could be limited to "competitive events" where participants and locations are determined close to the date of the event. He said that for non-competitive events such as the Passion Play in Oberammergau, the dates, locations and participants are known well in advance and existing consumer protections should be adequate.

Other commenters stated that the rule should not be limited to sports events. The American Society of Travel Agents (ASTA) said that it should apply to all events where a separately-purchased ticket is necessary for admission to the event. The RG Travel Companies, which were involved in sending 1,700 Wisconsin fans to the 1994 Rose Bowl, stated that the rule should cover any special event "where a good possibility exists that the demand for tickets will exceed the supply * * *" In a similar vein, the Pasadena Tournament of Roses commented that the rule should apply to any event with limited admission. The National Tour Association (NTA, representing motor coach tour operators) and Congressman Robert Andrews of New Jersey expressed the opinion that the rule should not be limited to sports events. Ms. Arlene Caldwell said that the rule should cover any tour that claims to include a ticket to the event, and Mr. Donald Hamilton stated that it should apply to any event for which tour packages are sold.

Q. Should the rule apply to both charter and scheduled transportation?

All of the commenters that expressed an opinion on this point felt that the rule should apply to both scheduled and charter air transportation. Those commenters were the RG Travel Companies, NACA, the NHL, ASTA, the NCAA, FBA, the Pasadena Tournament of Roses, and the Wisconsin Attorney General.

Q. Should the rule contain only the advertising and sale restrictions of §§ 380.18a and 399.87 (of the current Super Bowl rule), or should it also contain the "money back guarantee" of §§ 380.32 and 380.33 and/or the "booking rejection" and "contingent booking" procedures of § 380.31(c)?

Sections 380.18a and 399.87 prohibit advertising or sale of a "Super Bowl tour" (defined as one which is held out as including a ticket to the Super Bowl game) until the operator has physical possession of game tickets or has a contract with the National Football League, with an NFL team, or with another person who has a contract with the league or a team. Sections 380.32 and 380.33 state that any participant on a Super Bowl tour who does not receive promised game tickets must be given a refund of the entire tour price, even if a portion of the services are used. Section 380.31(c) provides that if an operator receives a booking for which he or she does not have possession of or a contract for a game ticket, the operator must return that participant's money within 3 days, unless the participant has authorized the operator in writing to retain the payment while the operator seeks additional tickets.

Except for NTA, all commenters that expressed a position on this question felt that some form of regulation along these lines was appropriate. NTA stated that the majority of its members that responded to a poll on this matter felt that regulation of special-event tours should not be a responsibility of the government, but the association said that in the event a rule is adopted it favors the "booking rejection" and "contingent booking" procedures of § 380.31(c).

ASTA and the Wisconsin Attorney General also expressed support for the "booking rejection" and "contingent booking" procedures. They favored the "money back guarantee" as well, as did the RG Travel Companies, the National Air Carrier Association (NACA, an organization of charter airlines), the NHL, NCAA, FBA, and Pasadena Tournament of Roses. The Tournament of Roses stated that this guarantee should apply "at any time prior to departure" if it is clear tickets will not be forthcoming. FBA commented "the greater the remedy available, the less likely that tour packagers will create the problem by promoting packages that may not be legitimate."

NACA said that there should be an exception to the "money back guarantee" for situations of force majeure and acts of God, such as the earthquake in San Francisco that forced postponement of the World Series. Similarly, the NHL stated that if the event is canceled or substantially altered after the tour begins, consumers should be entitled only to a refund of the face value of the event ticket, but that if such cancellation or alteration takes place before departure, the operator should be required to inform the consumers, who would have the right to cancel (presumably with a full refund).

Congressman Andrews was also in favor of the "money back guarantee," as well as a requirement for tour operators to disclose whether event tickets are guaranteed or tentative. However, he stated that any rule that would totally prohibit marketing of a special-event tour until the tour operator has event tickets in hand would not be practical. Tickets for many such events are not available until less than two weeks before the event, he pointed out, but other arrangements (e.g., air and hotel) must be made before that. NTA, the NCAA and the Wisconsin Attorney General stated that the current restrictions against marketing Super Bowl tours until the operator has game tickets in hand or under contract should be included in the new rule.

Q. If the scope of the type of event covered by the rule is broad, and the rule contains the "money back guarantee," should procedures be included that would protect the operator from having to refund the entire tour price if a participant doesn't receive promised admission to something like a welcoming cocktail party?

No commenters spoke in favor of a requirement to apply the "money back

guarantee" to events such as a welcoming cocktail party. Of those who commented on the issue, NTA, the NHL, ASTA, the Pasadena Tournament of Roses said that operators should not be required to refund the entire tour price over failure to provide something like a promised welcoming cocktail party. NACA and the Wisconsin Attorney General stated that the rule should require the value of undelivered ancillary events to be refunded, but should not require a refund of the entire tour price. FBA and the Wisconsin Attorney General both pointed out that certain events on a special event tour (e.g., the Tournament of Roses parade on a Rose Bowl tour) are integral to the experience for which the tour was organized while other events on the same tour (e.g., a side trip to Disneyland) are not. These two commenters suggest that integral events be protected by the" money back guarantee" of the total tour price, but not other events.

Q. Should the rule specifically ban last-minute or post-departure price increases for admission to the event, one of the problems that allegedly occurred on the 1994 Rose Bowl tours?

All commenters who offered an opinion on this subject felt that last-minute price increases should be regulated in some manner. The RG Travel Companies, NACA, the NCAA, ASTA, the Wisconsin Attorney General and Mr. Donald Hamilton stated that last-minute price increases should be banned. FBA and the Pasadena Tournament of Roses said that price increases at any time following purchase should be prohibited unless the consumer receives written notice that the operator reserves this right. The Pasadena Tournament of Roses also suggested that participants who cancel within a few days of notification of a price increase be entitled to a full refund. The Wisconsin Attorney General commented that on tours to special events, "last-minute or post-departure price increases are common and are tantamount to extortion" because other options may be sold out.

The NHL stated that, in general, price increases should be banned unless the face value of the ticket has been increased subsequent to departure of the tour. However, for events with short lead times such as the Stanley Cup playoffs, the NHL said that the rule should permit tours on which participants are required to agree to purchase event tickets at the yet-unknown face price plus a service fee, as long as the consumer is given prominent notice of this fact.

Q. Some tours are promoted in conjunction with a special event, but do not include, and do not represent that they include, admission to the event. For example, there have been tours to the Super Bowl host city during the Super Bowl weekend that prominently feature "Super Bowl" in the headline of advertisements and flyers, but which do not include game tickets. Should the new rule ban this practice, or require affirmative, prominent disclosure that admission to the event is not included?

All of the commenters that expressed an opinion on this issue felt that it should be regulated in some manner. The RG Travel Companies stated that they favored either banning the practice or requiring disclosure. The NCAA urged affirmative, prominent disclosure, "if such tours are to be allowed at all." All others who commented on this point (the NHL, ASTA, FBA, the Pasadena Tournament of Roses, and the Wisconsin Attorney General) recommended prominent disclosure. The NHL suggested a requirement that text disclosing the absence of event tickets from event-oriented tours should be at least 75 percent of the size of the name of the event in advertising material. The Pasadena Tournament of Roses said that such disclosures should be at least twice the size of the smallest text elsewhere in the ad or flyer, but in no case less than 12-point type, and that disclosure during verbal contacts should also be required.

Q. What would be the economic burdens of such a rule? Would the rule be impractical for events where the participants are known only a week in advance, e.g. the NCAA Final Four?

All of the parties that commented on this issue agreed that the rule can and should apply to events in which the participants are not known until shortly before the event. The RG Travel Companies commented that the rule would not be impractical because commitments centering around a particular team could be made contingent on that team qualifying for the event. NACA said the "money back guarantee" should apply regardless of the timing of the event. The NHL stated that the rule may be burdensome for organizers of short-lead-time tours, but that this is justified by the benefit to consumers. (Note also the NHL's earlier suggestion that on events where the participants become known only shortly beforehand, the rule should permit tours in which the participants must agree to purchase an event ticket whose face value is not yet known.)

ASTA, like NACA, said that the degree of advance notice is not relevant, and that an operator who markets an event-oriented tour before the participants are known should simply disclose that event tickets are not included in the advertised price. FBA commented that participating teams in college bowl games are generally known at least a month in advance, and also that any experience the Department has had with Super Bowl tours would be instructive, as the competing teams in that game are sometimes determined only a week before the game.

The Pasadena Tournament of Roses, the NCAA and the Wisconsin Attorney General all pointed out that even though the participating teams in the NCAA Final Four (the example in this question) are determined only the weekend before, the tickets are sold out months beforehand. Thus, the fact that the participants are not known until the final week has minimal impact on the availability of tickets and the feasibility of tours. The Pasadena Tournament of Roses asserted that any economic burden resulting from this rule would fall on ticket brokers and tour operators who buy event tickets from individuals in order to resell them. The Wisconsin Attorney General stated that consumer protection may be even more important in cases where event participants are determined at the last minute, because consumers have less time to investigate their options.

Other Comments

The Air Transport Association (ATA, an association of large scheduled airlines) filed a comment stating that it expressed no opinion about whether, or to what extent, the current Super Bowl rules should be made applicable to tours to other special events. However, ATA said that DOT should not make air carriers responsible for assuring that tour operators comply with the new rule. NACA echoed this view, stating that carriers should not be made the guarantors of tour operators.

Discussion

We have decided to propose a rule very similar to that described in the ANPRM, which in turn closely tracks the existing rules for Super Bowl tours.

The rule that we are proposing would apply to any tour that is organized for the purpose of attending a sporting, social, religious, educational, cultural, political or other event of a special nature and limited duration, which exists for reasons apart from the tour itself, and which is represented by the operator of the tour as including admission to that event. The Department does not wish to engage in line-drawing ofthe type that would be required were we to publish a list of

specific events that would be covered by the rule. In addition, we see no justification for limiting the applicability of the rule to sporting events. Few commenters specifically suggested such a limitation, although a number of them offered sports contests as examples of the type of event that should be covered. While the Wisconsin Attorney General is of course correct when he comments that the date and location of a non-competitive event such as the Passion Play in Oberammergau is known well in advance, this in itself does not lessen the likelihood of ticket shortages.

We agree with the comments that suggested that the rule should apply to any event where a separate ticket is required for admission to the event or where there is limited admission. The rule that we are proposing will apply to any tour to an event of the type described at the beginning of the previous paragraph in which the tour operator has represented that the tour includes admission to the event. If the event is free, or attendance is unlimited, the operator should have no trouble furnishing tickets and this rule will impose no burden. On the other hand, if tours are promoted to an unusually popular event of a non-sporting nature, those tour participants would be just as disappointed at not receiving the promised admission to the event that constituted the entire purpose of their trip as would a fan traveling to a bowl game.

We have tentatively concluded that the rule should apply to both charter and scheduled air transportation, as well as to any other form of air service meeting the statutory definition of "air transportation" that may develop in the future. Thus, we are proposing to apply it to "scheduled, charter, and other air transportation."

The proposed rule would apply to all interstate (i.e., domestic)[2] air transportation, and to foreign (i.e., international) air transportation originating at a point within the United States. Applying the rule only to outbound international flights is consistent with the approach taken in the existing Public Charter rule (see 14 CFR 380.23) and with the" country of origin" concept of regulation of international air transportation. As a policy matter, the Department has no interest in applying this rule to tours originating in foreign countries whose participants are largely or exclusively foreign citizens.

The rule that we are proposing would apply to any operator of a tour that meets the definition of a Special Event Tour, regardless of whether that operator is a direct air carrier (i.e., an airline), an indirect air carrier (e.g., a Public Charter operator), or a ticket agent (e.g., a scheduled-service tour operator, including a travel agent acting as a tour operator). The proposed rule would apply to both U.S. and foreign entities that act as operators of Special Event Tours, just as current § 399.87 does.

With regard to the comments of ATA and NACA, the ANPRM did not propose, and wedo not propose here, that this rule should include provisions that obligate direct air carriers to assure that tour operators comply with the rule. Except where an airline might choose to directly operate a Special Event Tour (i.e., to become the tour operator), a direct air carrier of a Special Event Tour will incur no greater or lesser obligations under this rule than it has in its capacity as a common carrier either certificated under 49 U.S.C. 41101 or holding a foreign air carrier permit issued under 49 U.S.C. 41301 (formerly sections 401 and 402 ofthe Federal Aviation Act).

As we suggested in the ANPRM, we are proposing to carry over the provisions from the existing Super Bowl rule that prohibit advertising or sale of such tours before game tickets are in hand or under contract. In the rule we are proposing here, these provisions will be expanded to apply to all special events. This approach was supported by the comments, and involves no novel processes since the existing procedures have been in place in the Super Bowl rule for 15 years.

In addition to the provision that prohibits advertising or sale of a Super Bowl tour until game tickets are in hand or under contract, the Super Bowl charter rule requires Super Bowl charter operators to include in the prospect us that is required to be filed with the Department for all Public Charters a certification that they have the game tickets in hand or else a copy of the contract for the game tickets. We do not propose to carry over this additional filing requirement to the new rule. The underlying requirement to have the tickets or ticket contracts before advertising or sales commence will remain and is enforceable. The Super Bowl rules that apply to scheduled-service tours have never required a filing of this type. Now that regulation of this type of tour is being consolidated in a single rule, we see no justification for having a filing requirement for charter tours but not scheduled-service tours, nor do we see a need to impose a new paperwork burden on scheduled-service tour operators. This action is consistent with the Paperwork Reduction Act and with the Department's proposal in Docket 48341 (57 FR 42864) to eliminate unnecessary paperwork burdens on charters.

Congressman Andrews expressed concern that any rule that would prohibit marketing of a tour until tickets are in hand would not be practical, since tickets for many events are not available until a couple of weeks in advance but other arrangements (e.g., air and hotel) must be made before that. However, neither the existing nor proposed rules requires that tickets be in hand before marketing is allowed; the operator must simply have a written contract for the tickets.

The proposed rule also incorporates the so-called "booking rejection" and "contingent booking" procedures currently found in § 380.31(c) of the Super Bowl charter rule, and expands them to apply to all events and to all forms of air transportation. These provisions require operators to return unsolicited bookings for which they don't have event tickets unless a tour participant authorizes the operator in writing to retain the participant's payment while the operator attempts to obtain more event tickets. We are modifying this slightly to allow for situations in which participants agree to take the tour without an event ticket; the operator would be required to obtain the participant's written acknowledgment of this understanding.

One of the key provisions of the Super Bowl charter rule is the requirement for the operator to refund the total tour price to any participant who does not receive a promised game ticket, even if the participant uses all of the other tour features. The ANPRM tentatively proposed to incorporate this provision in the new rule, but also asked for comment on whether the rule should contain only the "booking rejection" and "contingent booking" procedures without the "money back guarantee." However, the comments solidly supported the "money back guarantee," and we have incorporated it in the proposed rule. We agree with the Football Bowl Association that strong consumer remedies will also have the effect of deterring the promotion of non-legitimate tour packages.

NACA commented that there should be an exception to the "money back guarantee" for situations of force majeure and acts of God, such as the

[2] The statutory term "overseas air transportation," which referred to domestic transportation to or from U.S. territories or possessions, was abolished in a recent recodification of transportation laws. Such transportation is now included in the definition of "interstate air transportation," and consequently would be covered by this proposed rule.

earthquake in San Francisco that caused postponement of the World Series. The NHL suggested that if the event is canceled or substantially altered, participants should be entitled only to a refund of the face value of the event, not the total tour price. It was never our intent to make the tour operator the guarantor of the event itself. The "money back guarantee" in the existing Super Bowl charter rule kicks in "if game tickets are not supplied." The rule we are proposing here would require refunds ". . . if promised admission to the [event] is not furnished by the tour operator . . ." These provisions are directed toward potential problems with ticket distribution, not with the event itself. If people who *have* tickets are able to attend the event and Special Event Tour participants are shut out because they don't have tickets, the "money back guarantee" applies. On the other hand, if nobody with a ticket can use it during the period of the tour because the event itself was canceled or postponed, the "money back guarantee" does not apply.

We wish to make it clear that we are talking only about problems with the event itself, not about any or all problems that the tour operator might view as beyond its control. Failure of a ticket broker to deliver tickets to the tour operator does not invalidate the "money back guarantee."

We agree with the NHL that if the event is canceled consumers should receive a refund for the portion of their tour price that applied to the event that they paid for but did not receive. However, mandating such a partial refund in a situation where the event itself did not take place and where there were no problems with ticket distribution is beyond the scope of this proceeding. This is a matter best dealt with in the context of contract law or other applicable existing law.

The ANPRM solicited comment on whether the rule should include procedures to protect the tour operator from having to refund the total tour price to participants who don't receive promised admission to an "event" like a welcoming cocktail party. Most commenters who addressed this issue were opposed to requiring a refund of the entire tour price in these circumstances. Some suggested that participants so affected simply be entitled to a refund of the value of that ancillary event. Two commenters urged that a tour operator's failure to deliver admission to ancillary events that are integral to the experience for which the tour was organized (e.g., the Tournament of Roses parade on a Rose Bowl tour) should entitle the participant to a refund of the total tour price.

In raising this issue in the ANPRM, the Department had intended to focus on the situation of a tour that would not normally be thought of as a Special Event Tour but which held out admission to an "event" as one of its features, e.g., a welcoming cocktail party on a 5-day package to the Bahamas. If the definition of "special event" had been broad, we were concerned that the rule might have the effect of requiring refunds of the entire price on such tours after failure to deliver a relatively minor and low-value component. The comments have shed light on another issue: multiple "events" on a true Special Event Tour.

We agree with the commenters that failure to deliver a relatively minor feature should not result in a refund of the total tour price. We also feel that this rule should be limited to tours that are organized around an event, not to events that occur in the normal course of the typical vacation tour. Accordingly, we have limited the scope of the proposed rule in two ways. First, there will be a definition of "Special Event Tour" in proposed § 381.5 which is broad yet specific; it will limit the applicability of the rule to tours to sporting, social, religious, educational, cultural, political or other event of a special nature and limited duration, which exist for reasons apart from the tour itself. Second, the "money back guarantee" in proposed § 381.11 will apply only to the primary event for which a Special Event Tour is organized.

Limiting the "money back guarantee" to the primary event on the tour will solve the problem of having this guarantee cover minor events on a true Special Event Tour. However, it will also have the effect of excluding some more significant events such as the Tournament of Roses parade. Nonetheless, we have tentatively decided to move in this direction. Identifying the primary event on a Special Event Tour will seldom be a matter of debate. However, identifying secondary events that are "integral to the experience" of the tour would be a far more subjective exercise, and in any event is beyond the scope of this proceeding as set forth in the ANPRM. Tour participants who do not receive promised admission to a secondary event may have a contractual right to a refund of the value of that event, and they can pursue that with the tour operator.

In the ANPRM, the Department solicited comment on whether the rule should ban last-minute or post-departure price increases, something which occurred on certain tours to the 1994 Rose Bowl. The great majority of the comments on this subject favored banning such increases. Some commenters said no price increase should be permitted unless the tour operator has reserved this right in writing and allows participants to cancel and receive a full refund in the event of a price increase.

We have decided to incorporate into the proposed rule the price increase provisions of the Department's Public Charter rule (14 CFR § 380.33). While it is not our intent in this proceeding to address all potential sources of consumer harm on Special Event Tours, the issue of price increases is directly related to the issue of ticket availability. Almost any event ticket is procurable if the price is right; if we did not regulate price increases in the Special Event Tour rule, tour operators would always be able to acquire event tickets at greatly inflated prices and then simply increase the price to the participant to cover it. Since a ticket has been offered in this situation, the "money back guarantee" would not come into play.

The proposed provisions on price increases, modeled on similar provisions in the charter rule, state that if a given participant is assessed price increases for the tour that in the aggregate are more than 10 percent above his or her original tour price, the participant shall have the right to cancel and receive a full refund (i.e., no cancellation penalties would apply). No price increases in any amount would be permitted less than 5 days before departure (as opposed to 10 days in the charter rule, recognizing the fact that Special Event Tours often have shorter lead times than the typical charter). This would eliminate both last-minute and post-departure price hikes. Finally, proposed § 381.11 specifies that the promised event ticket must be furnished at the price agreed to before departure or else the operator is subject to the "money back guarantee" just as if he had not provided the ticket at all.

The NHL commented that for events with short lead times such as the Stanley Cup playoffs, the rule should permit tours on which participants are required to agree to purchase event tickets at the yet-unknown face price plus a service fee, as long as the consumer is given prominent notice of this fact. As an initial matter, we would point out that a tour would not be covered under this rule at all if the event ticket were simply held out as an option rather than as a mandatory feature. However, where the participant must agree to buy the event ticket, such

tours are clearly Special Event Tours since the tour operator is representing that admission to the event is included in the tour (even if the price of that admission is not yet known and consequently any price that is advertised for that tour is not the full tour price).

However, nothing in the proposed rule would explicitly prohibit a transaction of this type. The operator would still have to have the requisite number of event tickets under contract before advertising or sales could begin; in other words, the variable must be price, not availability. Beyond that, the proposed rule requires that tour participants must receive promised event tickets "at the tour price agreed to before departure" or else the participant is entitled to a refund of the total tour price. If a participant agrees to a price consisting of a known value p plus an unknown value x, and the operator delivers the tour (including the event ticket) at that price, the operator has satisfied the requirements of the rule.

The ANPRM noted that some tours are promoted in conjunction with a special event, but do not include, and do not represent that they include, admission to the event. We solicited comment on whether the new rule should ban this practice, or whether it should specify a form of required disclosure. Most of the comments favored requiring disclosure of the fact that an event ticket is not included. However, we have tentatively decided not to include such a requirement in the proposed rule. Consumers solicited for these tours are able to determine from the advertising material that an event ticket is not held out as included; this is distinguishable from the situation of a tour participant who paid for an event ticket and then did not receive it. Should any particular tour deceptively imply that event tickets are included when in reality they are not, the Department has authority to take enforcement action against deceptive practices.

The ANPRM sought comment on whether the rule would be impractical for events where the participants are known only a week in advance, such as the NCAA Final Four. All of the parties that commented on this issue thought that this should not be a problem, and that the rule should apply. As noted in the Comments section above, several commenters pointed out that the Final Four sells out months in advance even though the participating teams are not determined until the week before. Also, as FBA noted, the contestants in the Super Bowl have been determined only the week before on several occasions, and that does not appear to have either harmed the marketability of Super Bowl tours or resulted in additional consumer problems.

While the period for comment on a Notice of Proposed Rulemaking is normally 60 days, the Department is requesting comment on this notice within 30 days after it has been published in the **Federal Register**. The rule proposed in this notice has changed little from the tentative proposal that the Department discussed in detail in the Advance Notice of Proposed Rulemaking in this proceeding (59 FR 4614, February 1, 1994). The Comments on the ANPRM were largely supportive of the proposal, and we do not anticipate controversy over this NPRM. The proposed rules are drawn from existing regulations on charters and Super Bowl tours, and the industry is familiar with the procedures in those rules. If the volume or nature of the NPRM comments should warrant, the Department can extend the comment period.

Regulatory Analyses and Notices

This NPRM is considered to be a non-significant rulemaking under DOT regulatory policies and procedures, 44 FR 11034. The proposal would have minimal economic impact, and accordingly no regulatory evaluation has been prepared. The NPRM was not subject to review by the Office of Information and Regulatory Affairs pursuant to Executive Order 12866.

The NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

I certify that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

For the reasons set forth in the preamble, the Department proposes the following:

1. To amend title 14, chapter II, subchapter D by adding a new part 381, to read as follows:

PART 381—SPECIAL EVENT TOURS

Sec.
381.1 Purpose.
381.3 Applicability.
381.5 Definition.
381.7 Advertising.
381.9 Sales.
381.11 Refunds.
381.13 Price increases.

Authority: 49 U.S.C. 40113(a) and 41712 (formerly sections 204(a) and 411 of the Federal Aviation Act of 1958, as amended).

§ 381.1 Purpose.

The purpose of this part is ensure that air travelers who have purchased tours to special events will receive the promised admission to the event. This rule expands the "Super Bowl rule" (formerly contained in part 380 and §§ 399.87 of this subchapter) to other events.

§ 381.3 Applicability.

This rule applies to Special Event Tours that are (a) in interstate or overseas air transportation, or (b) in foreign air transportation originating at a point in the United States. It applies to U.S. and foreign operators of Special Event Tours, whether they be air carriers or ticket agents. It applies to scheduled, charter, and other air transportation.

§ 381.5 Definition.

Special Event Tour means a tour that is organized for the purpose of attending a sporting, social, religious, educational, cultural, political or other event of a special nature and limited duration, which exists for reasons apart from the tour itself, and which is represented by the operator of the tour as including admission to that event. Examples of such events include, but are not limited to, college and professional sporting events, the Olympics, concerts, the Passion Play in Oberammergau, etc.

§ 381.7 Advertising.

No operator of a Special Event Tour or agent of such an operator shall conduct, or cause or allow to be conducted, any advertising, solicitation or other promotion for a Special Event Tour unless:

(a) The operator is in physical possession of enough tickets for admission to the event to provide such tickets for a substantial number of seats on the tour, or

(b) The operator has entered into a written contract with an organization that is the distributor of such tickets or an organization that receives such tickets directly from the distributor (e.g., a bowl committee; football conference, league or team; concert promoter or arena; etc.), the terms of which provide for that organization to furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour, or

(c) The operator has entered into a written contract with another person or organization that has a written contract or series of written contracts with the distributor of such tickets or with an organization that receives such tickets directly from the distributor, the terms of which provide for that organization to

furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour.

§ 381.9 Sales.

(a) Except as provided in § 381.9(b):

(1) No operator of a Special Event Tour shall accept money for a seat on a Special Event Tour, or authorize an agent to accept such money, unless the operator has physical possession of, or written contracts (in the manner described in § 381.7) for, a ticket for admission to the event for that individual. To the extent that the operator receives an unsolicited booking for which the operator does not have physical possession of or written contracts for a ticket for admission to the event, any payment accompanying that booking must be returned within 3 business days.

(2) Upon acceptance of the money for a sale, the operator must reserve one event ticket for that individual. An operator may not sell more seats on the tour than it has event tickets in hand or under contract. (An operator need not continue to reserve an event ticket for an individual who withdraws from the tour by providing notice to the operator or by being notified by the operator that the individuals participation has been canceled due to failure to remit a required installment payment.)

(b) An operator of a Special Event Tour may accept a booking and payment from an individual for whom the operator does not have an event ticket in hand or under contract if that individual agrees in writing that he or she understands that no event ticket has been reserved for him or her. This agreement shall specify whether the person has agreed to participate in the tour without an event ticket and/or the operator has agreed to attempt to acquire an event ticket for this person. If the two parties agree that the operator will attempt to acquire an event ticket, the agreement shall specify any penalties that will apply if the individual later cancels because an event ticket did not become available. If the operator notifies this person that an event ticket has become available, that person shall enjoy all the other protections of this rule from that time.

§ 381.11 Refunds.

If promised admission to the primary event for which a Special Event Tour was organized is not furnished by the tour operator, at the tour price agreed to before departure (including any increases that the participant has accepted pursuant to § 381.13(a)), the operator must provide each tour participant affected in this way a refund of the total tour price. This refund is to be provided within 14 calendar days after the scheduled return date of the tour.

§ 381.13 Price increases.

(a) Should the tour operator increase a participant's tour price by more than 10 percent (aggregate of all increases to that participant), that participant shall have the option of canceling his or her participation in the tour and receiving a full refund within 14 days after the cancellation.

(b) The tour operator shall not increase the tour price to any participant less than 5 days before departure.

2. To amend Title 14, Chapter II, Subchapter D, Part 380 as follows:

A. Remove the term *Super Bowl charter* from the definitions in § 380.2.

B. Amend § 380.18, "Charters for special events," to add a new paragraph (f):

* * * * *

(d) Where the charter operator represents that the charter includes admission to the special event, the charter shall comply with part 381 of this subchapter.

C. Remove § 380.18a and its reference in the table of contents at the beginning of the part.

D. Remove § 380.28(a)(4).

E. In § 380.31(b), end the sentence after the phrase " * * * on specific alternative flights they have requested." Remove the remainder of the original sentence, which begins " * * * or, in the case of Super Bowl charters * * *."

F. In § 380.31(c), remove the phrase "* * * or in the case of Super Bowl charters, if the operator does not have either possession of or written contracts for any game tickets, * * * ."

G. In § 380.31(c), remove the phrase "* * * (3 days for Super Bowl charters) * * * " in the two locations where it appears.

H. In § 380.31(c), remove the phrase "* * * or in the case of Super Bowl charters, attempts to obtain more game tickets, * * *."

I. In § 380.32(s), remove the second sentence.

J. Remove § 380.33(a)(5).

3. To amend title 14, chapter II, subchapter D by removing and reserving § 399.87.

Issued this 6th day of October, 1994 at Washington, DC.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 94–25318 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1307, 1309, 1310, 1313 and 1316

Implementation of the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200)

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: DEA is proposing these regulations to implement the Domestic Chemical Diversion Control Act of 1993, which became effective on April 16, 1994, in order to provide additional safeguards against the diversion of regulated chemicals.

DATES: Written comments or objections must be received on or before December 12, 1994.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attention: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–4025.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Chemical Diversion and Trafficking Act of 1988, (PL 100–690) (CDTA) was passed by Congress to control the diversion of certain chemicals (hereinafter referred to as listed chemicals) that are necessary for the illicit manufacture of drugs such as heroin, cocaine, methamphetamine and LSD. The CDTA and its implementing regulations, as set forth in Title 21, Code of Federal Regulations (21 CFR), parts 1310 and 1313, established a system of recordkeeping and reporting requirements through which DEA and the chemical industry could identify persons seeking to divert listed chemicals for the manufacture of illicit drugs. The CDTA allows for the tracking and, where necessary, control of domestic and international transactions involving listed chemicals.

The CDTA has had strong success. The greatest impact has been in the international arena, with a significant reduction in exports of listed chemicals from the United States to countries that are known sources of cocaine. Domestically, the volume of chemicals available to clandestine laboratories was

reduced. However, these successes also highlighted several shortcomings in the CDTA, including:

1. The CDTA provided a mechanisms for DEA, with the cooperation of the chemical industry, to identify persons engaging in suspicious transactions and, as needed, take action against those persons. However, lacking evidence that an individual knowingly supplied chemicals for the illicit manufacture of drugs, DEA's options were limited.

2. Persons engaged in the illicit manufacture of methamphetamine and methcathinone were able to obtain supplies of the listed chemicals critical to the manufacture of such drugs through the purchase of drug products that were exempted from the provisions of the CDTA.

3. Illicit drug manufacturers in foreign countries began to purchase their supplies of listed chemicals from countries other than the United States, on occasion utilizing the services of United States based brokers and traders to facilitate the transactions.

To address these and other concerns, Congress passed legislation in late 1993 to amend the CDTA.

II. The Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200)

The Domestic Chemical Diversion Control Act of 1993 (DCDCA) was signed into law on December 17, 1993, and became effective on April 16, 1994. The DCDCA is intended to close avenues used by illicit drug manufacturers to circumvent the CDTA. The main provisions of the DCDCA are as follows:

1. Precursor and essential chemicals have been redesignated as List I and List II chemicals respectively.

2. Any person who manufactures, distributes, imports or exports a List I chemical must obtain a registration from DEA. DEA is authorized to deny an application for registration or suspend or revoke a registration to manufacture, distribute, import or export a List I chemical, if it is established that such registration would not be in the public interest.

3. Transactions involving drug products marketed under the Food, Drug, and Cosmetic Act (FDCA) which contain ephedrine, either as the sole active medicinal ingredient or in combination with therapeutically insignificant quantities of another active medicinal ingredient, are now included in the definition of regulated transaction. Subjecting these products to the registration, recordkeeping and reporting requirements eliminates a virtually unrestricted source of ephedrine for illicit manufacturers of methamphetamine and methcathinone. The DCDCA also grants DEA the authority to remove the exemption for any other drug that contains a listed chemical if DEA determines that the drug is being diverted in order to obtain the listed chemical for use in the illicit manufacture of a controlled substance.

4. Brokers and traders based in the United States who arrange international transactions involving listed chemicals will be subject to the same reporting and recordkeeping requirements as exporters of listed chemicals, thus controlling a previously unmonitored source of chemicals for clandestine laboratories in foreign countries.

5. Manufacturers of listed chemicals are required to provide DEA with annual reports regarding the manufacture of such chemicals. The reports will provide DEA with information regarding the volume of listed chemicals available in the United States.

III. Implementation of the DCDCA

To implement the DCDCA, DEA is proposing the following regulatory changes and additions:

1. A new part 1309 of Title 21, Code of Federal Regulations is to be added, setting forth the specific requirements for registration, the application forms to be used, the application fees, exemptions from the registration requirement, security provisions, and administrative procedures regarding approval or denial of an application, revocation of registration, and administrative hearings. With respect to the requirement of registration in the proposed Section 1309.21, DEA has granted a temporary exemption from the registration requirement pending implementation of the registration program, as set forth in an Interim Rule published in the **Federal Register** on March 24, 1994 (59 FR 13881).

Under the CDTA, regulated persons consist of those firms engaged in the distribution, importation or exportation of chemicals. The DCDCA regulates drug products containing ephedrine which are distributed by retail distributors such as convenience stores, liquor stores, truck stops, gas stations, nutrition centers, etc. These retail outlets do not distribute any other listed chemicals and their activities consist solely of the sale of such products directly to walk-in customers. DEA has determined that retail distributors should be categorized separately in light of the limited scope and volume of their chemical activities.

Pursuant to 21 U.S.C. 822(d), the Administrator may waive the requirement of registration. The Administrator is proposing in § 1309.25 of these regulations to exempt persons registered with DEA to manufacture, distribute, dispense, import, or export a controlled substance from the chemical registration requirement for equivalent activities involving drug products that are regulated as List I chemicals pursuant to § 1310.01(f)(1)(iv). This includes such traditional sources for these products as pharmacies, hospitals, pharmaceutical manufacturers, distributors, etc. Further, the Administrator proposes in § 1309.27 to exempt from the registration requirement those persons who manufacture a List I chemical solely for internal use, with no subsequent distribution or exportation.

With respect to the exemptions from the registration requirement, DEA has determined that persons who manufacture List I chemicals solely for internal use, without any subsequent distribution or exportation of such chemicals, should not be required to obtain a registration, since there is a low risk of diversion from such persons.

It has also been determined that persons who are registered with DEA to manufacture, distribute, or dispense controlled substances shall not be required to obtain a separate registration to distribute drug products that are regulated as List I chemicals. Further, persons who are registered with DEA to import or export controlled substances shall not be required to obtain a separate registration to engage in the same activities with drug products which are regulated as List I chemicals. Persons registered to engage in activities with controlled substances are subjected to more comprehensive investigations by Federal and state authorities relating to their controlled substance registrations than is required for a chemical registration. The Administrator reserves the right in this proposal to cancel a person's exemption from the registration requirement, if continuation of the exemption would not be in the public interest.

2. Section 1310.01 is amended to revise the definitions of "regulated transaction" and "regulated person", and to add new definitions of "broker" and "trader", and "international transaction".

3. Chemical mixtures that met the definition of "chemical mixture" set forth in § 1310.01(g) prior to the effective date of the DCDCA shall remain exempted from the definition of regulated transaction until DEA has promulgated final regulations regarding the procedures by which manufacturers may request exemption of chemical mixtures.

4. Section 1310.02 is amended to remove three chemicals from List I: d-lysergic acid, n-ethylephedrine and n-ethylpseudoephedrine; and to add to List I: nitroethane and benzaldehyde, as established by the DCDCA. In addition, the DEA chemical codes assigned to the listed chemicals have been added.

5. Section 1310.03 is amended to implement the requirement that manufacturers of listed chemicals report certain data to DEA. This requirement will only apply to bulk manufacturers of listed chemicals.

6. Section 1310.04 is amended to reflect the additions and deletions of the List I chemicals and to set forth the proposed thresholds for the new chemicals. With respect to the newly added chemicals Nitroethane and Benzaldehyde, records and reports must be kept only for those transactions, including cumulative transactions within a calendar month, which equal or exceed the proposed thresholds.

7. Sections 1310.05 and 1310.06 are amended to include a reporting requirement with respect to drug products containing ephedrine that are regulated as List I chemicals and to set forth the required format for the chemical manufacturer reports. Drug products containing ephedrine are legitimately distributed solely for human consumption. Thus, the distribution of 375 dosage units (approximately a two-month supply at the current recommended therapeutic dose) or more of such drug products in a calendar month to a person who is not registered with DEA to distribute or export a List I chemical would be considered extraordinary and therefore would have to be reported.

8. Section 1310.08 is amended to add international transactions to the types of transactions regulated.

9. Sections 1310.10 through 1310.15 are added to set forth the procedures regarding removal of the exemption from recordkeeping and reporting requirements of drugs distributed under the Food, Drug, and Cosmetic Act, the exemption from recordkeeping and reporting requirements of chemical mixtures, and the identification of drugs which contain ephedrine in combination with therapeutically significant quantities of another medicinal ingredient.

10. Section 1313.02 is amended to revise the definitions for "regulated person" and "regulated transaction"; and definitions for "regular importer", "established record as an importer", "broker" and "trader", and "international transaction"; and to remove the definition of "regular supplier".

11. Sections 1313.12, 1313.15 and 1313.21 are amended to set forth criteria regarding the waiver of the 15 day notification requirement for certain imports and exports of listed chemicals and the removal of the waiver of the 15 day notification requirement for exports of listed chemicals to specified countries.

12. Sections 1313.32, 1313.33 and 1313.34 are added to establish the notification requirements for brokers and traders engaging in international transactions.

IV. Fees

Section 1309.11 proposes the application fee for registration and reregistration of manufacturers, distributors, importers and exporters of List I chemicals, as authorized by section 3(a) of the DCDCA. The proposed fee was established pursuant to the Office of Management and Budget (OMB) Circular A–25, as revised on July 15, 1993 (58 FR 38142), which sets forth Federal policy regarding user fees.

1. Circular A–25, Section 6 provides that "[A] user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." The section further requires that the user charge be sufficient to "* * * recover the full cost to the Federal Government for providing the special benefit." A special benefit is described as a Government service which "Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, *or a license to carry on a specific activity or business* [emphasis added] or various kinds of public land use)".

Sections 822 and 957 of Title 21, United States Code, as amended by the DCDCA, require that any person who manufactures, distributes, imports or exports a List I chemical must obtain annually a registration in accordance with DEA rules and regulations. A registration to manufacture, distribute, import or export List I chemicals is a benefit under Circular A–25, in that it allows the registrant to engage in certain activities while a member of the general public may not. Therefore, the costs associated with DEA's issuance of a registration to manufacture, distribute, import or export a List I chemical; certain costs associated with advising registrants of their responsibilities; and maintenance of the integrity of the registration system must be recovered through assessment of a user fee.

2. Section 6(d) of Circular A–25 describes the requirements for determining the full cost of a service or benefit. "Full cost" is defined as all direct and indirect costs, including, but not limited to: direct and indirect personnel costs, including salaries, fringe benefits (such as life and health insurance and retirement) and travel; physical overhead, including material and supply costs such as forms, postage, equipment, rent and utilities; management and supervisory costs; and the costs of enforcement, collection, research, establishment of standards, and regulation. Section 6(d)(1)(e) provides that the cost figures shall be established utilizing "the best available records of the agency and new cost accounting systems need not be established solely for this purpose." The cost of the services provided by DEA were determined by use of proven and accepted budget estimating techniques as outlined in the DOJ budget guidelines and OMB Circular A–11.

Considerations for the Establishment of the Original Fee

DEA has identified two distinct categories of chemical registrants: retail distributors, such as convenience stores, gas stations, truck stops, liquor stores, etc., whose regulated activities consist of the direct sale to walk-in customers of drug products that are regulated as List I chemicals; and non-retailers, such as manufacturers which distribute, distributors, importers and exporters of List I chemicals.

Based upon contacts with the chemical industry and surveys of the industry over the past three years, DEA estimates that approximately 1,500 applications for registration will be received from non-retailers.

Based on the information gathered from various sources, including association data, surveys of ephedrine manufacturers and distributors, and correspondence received from ephedrine distributors, DEA estimates that there may have been as many as 100,000 retail distributors that, prior to the April 16, 1994 effective date of the DCDCA, sold drug products that are now subject to regulation. However, estimating the number of persons who will continue to engage in activities with the regulated drug products is speculative, due to a variety of factors. Some retailers who engaged in this previously unregulated activity may decide to no longer sell items for which registration is required by law. Also, the activities of retail distributors may be affected by state laws, such as those in Wisconsin, Florida and Missouri, which require that drug products containing

ephedrine as the sole medicinal ingredient may only be dispensed pursuant to prescription. Another consideration is the availability of alternative products that are not subject to the registration, recordkeeping and reporting requirements. DEA has learned that certain distributors of single-entity ephedrine products have already advised their retail customers to switch to such alternative products to avoid the registration and recordkeeping requirements. Therefore, for purposes of establishing the initial fee, DEA estimates that 10,000 applications will be submitted by retail distributors. The number of applications is important only when considering apportionment of indirect costs associated with initial registration. For the first year of the registration program, this amount will constitute $22.00 of the total fee. Thus, a larger or smaller number of applicants would not result in any significant increase or decrease in the registration fee.

During the implementation of the DCDCA, DEA will focus on processing applications, conducting pre-registration and follow-up investigations and the creation and dissemination of information regarding the registrant's responsibilities under the DCDCA. DEA expects that the majority of its chemical control resources will be required to handle the applications which will be submitted immediately following implementation of the regulations.

Once the pre-registration process for existing businesses has been handled, the primary focus of DEA's chemical control program will be investigations of violative firms and registration denial or revocation proceedings. Such enforcement activities protect the integrity of the registration system by ensuring that registrants continue to meet the requirements of the DCDCA. DEA's activities will include, but not be limited to, extensive investigation and collection of documentation regarding violative practices by registrants; attorney review and preparation by DEA's Office of Chief Counsel; staff and attorney time to prepare for proceedings to deny or revoke a registration; Administrative Law Judge and staff to conduct registration denial hearings; and DEA budget and controller staff time for budget planning, accounting and auditing of fees collected. The benefits of these activities accrue to the over-all registrant population and the costs for such activities must be averaged across the entire registrant population. However, as described earlier, the expected registrant population and the extent of these enforcement activities are speculative at this time. Therefore, the costs associated with these activities have not been included in this initial fee, since they are indirect costs that would have to be averaged across a presently unknown population of applicants.

After the registration process is completed and the registrant population and extent of activities necessary to protect the integrity of the system has been determined, DEA will revise its fee schedule to recover the full costs of its chemical control program, as required by Circular A–25. DEA will publish in the **Federal Register** its revised fee schedule and invite comment by interested parties.

In light of the above, the initial registration fee will be based upon the cost of processing the individual application, the associated investigation of the qualifications and suitability for registration, and the creation and dissemination of information regarding the responsibilities under the DCDCA. Reregistration fees under this proposal will include enforcement and compliance costs associated with maintenance of the integrity of the registration and control system. These fees will not include enforcement costs of reviews of records and reports of fully complaint registrants exclusively to identify leads to possible illicit drug laboratories.

The Initial Registration Investigation

The fundamental purpose of the pre-registration investigation is to determine the fitness and suitability of the applicant to engage in the activities for which registration is requested and to ensure that the applicant is familiar with its responsibilities to prevent the diversion of regulated products or chemicals. This will be accomplished through an on-site visit to the applicant (following receipt and processing of the application for registration by clerical personnel) by DEA Diversion Investigators. During this on-site visit, the applicant's responsibilities with respect to security, record-keeping and reporting will be discussed; the applicant's existing provisions for security, record-keeping and reporting, if any, will be reviewed, along with previous sales and customers; and the applicant will be provided with material, such as the Chemical Handlers Manual, regarding chemical trafficking and controls. In addition, the investigator will perform background checks on the applicant, owner and employees, and prepare the necessary reports summarizing the results of the registration review.

Retail distributors engage in a limited activity as regulated by the DCDCA. By contrast, non-retail chemical firms may deal in a range of List I chemicals, in bulk lots or, pursuant to orders received by mail, telephone, facsimile or other electronic means. Consequently, the average pre-registration investigation for a retail distributor will entail less DEA investigative time than for a non-retail chemical firm.

Method for Collection of Fees

For the initial registration fee, DEA has established separate costs for processing the application, and for conducting the pre-registrant investigation. Both costs will be incurred by the applicant prior to their initial registration under the DCDCA.

As noted above, DEA anticipates receiving 1500 applications from non-retail chemical firms and approximately 10,000 applications from retail distributors. DEA will place priority on the completion of the pre-registration investigations of non-retail chemical firms. All non-retail applications will be processed and reviewed within the first year of the effective date of this regulation. Therefore, the full fee (application and pre-registration investigation costs) must be submitted with the application.

Because of the demands for resources to conduct registration reviews of non-retail applications and for other chemical control activities, DEA will be unable to process and review all of the applications submitted by retail distributors within the first year following the effective date of the final rule. As a consequence, retail distributors will be subject to a split fee schedule for their initial registration. Each retail distributor will include with their application the established fee to cover the costs of processing the application.

Based on available resources, DEA will identify and notify approximately 1500–2000 of the retail applicants that they are scheduled for pre-registration review in the first year. Each applicant so identified will be required to pay the additional established cost for the registration investigation prior to commencement of the review. Based upon the volume of applications received, DEA may conduct additional retail registration investigations in the first year. In the second year, DEA will redirect resources spent conducting non-retail pre-registration investigations to the retail level. DEA anticipates an additional 6,000 to 8,000 pre-registrant investigations to be conducted in the second year. These retail distributors will similarly be notified of the investigation fee to be paid. They will *not* be required to submit another

application fee. However, if a retail distributor fails to submit the required investigation fee within 30 days after notification by DEA, that retail distributor's application will be withdrawn.

Reregistration Fees

Following the completion of the initial registration process, DEA will dedicate ongoing resources to insuring the controls of the DCDCA are being maintained, protecting the integrity of the system, and providing assistance, guidance, and interpretation of the chemical control requirements to the registrants. These costs, along with application processing costs will establish the basis for the annual reregistration fee. Since many of these costs will be averaged across the registrant population, it is only possible to establish a reregistration fee at this time based upon estimated populations. After the full second year of the regulations implementing the DCDCA, the fee schedule will be reviewed, as required by Circular A–25, and a new fee structure proposed for public comment, based upon the actual registrant population.

As stated above, DEA will complete the registration process for all non-retail applicants in the first year. Investigative resources devoted to these pre-registration investigations (approximately 12 workyears) will be directed towards completion of the pre-registration process of retail distributor applicants in the second year. At the non-retail level, DEA will dedicate eight workyears of investigator time to conduct follow-up investigations of approximately 75 non-retail firms. Each investigation will require a comprehensive review of each registrant's records, reporting systems and security provisions to ensure that the registrant is complying with the chemical control requirements, and chemicals are not being distributed to persons seeking to divert them. Investigators will conduct a comprehensive on-site review of the registrant's records; verification of transactions and purchasers, including record checks of and visits to purchasers; travel; and report preparation. This cost, plus the reregistration processing fee and the above listed indirect costs averaged over the estimated 1500 non-retail registrants will constitute the non-retail reregistration fee.

At the retail level, due to the large volume of firms and the general lack of experience in the required record-keeping and reporting requirements, DEA will conduct a greater number of follow-up investigations. However, in light of the anticipated smaller volumes of regulated transactions of such firms, each follow-up is scheduled for a smaller amount of on-site time. DEA anticipates that two Diversion Investigator workyears will be required to conduct follow-up investigations at the retail level. This cost, plus the reregistration processing fee and above listed indirect costs averaged over the estimated 2000 retail distributors registered in the first year will constitute the reregistration fee.

As DEA completes the second year of the chemical registration program, the bulk of the retail distributor new applications will have been processed, thus freeing the resources assigned to conduct the registration investigations. In the following years, there will be a greater number of registrants submitting applications for reregistration. DEA will dedicate proportionally greater resources to these registrants. As noted earlier, following the initial two years of the registration program, DEA will conduct a review of the fee structure and, as needed, publish a notice in the **Federal Register** regarding amendment of the fee schedule.

Registration Costs.

The costs associated with the registration process are as follows. DEA estimates that 1,500 non-retail applications and approximately 10,000 retail applications will be received. As previously stated, the personnel costs listed below include all direct and indirect costs, including salaries, fringe benefits (such as life and health insurance and retirement) and travel; physical overhead, including material and supply costs such as forms, postage, equipment, rent and utilities:

COSTS FOR PROCESSING AN APPLICATION AND ISSUING A RETAIL DISTRIBUTOR REGISTRATION

Cost for processing a retail distributor application		
Clerical Time[1]	.25 hours	$6.52
Material Costs:[2]		
Application Form		0.22
Postage		0.39
Chemical Handlers Manual		0.30
Total Application Processing Cost		7.43
Cost for registration review for a retail distributor applicant		
Direct Costs:		
Investigator Time[3]	5.5 hours	219.56
Clerical Time[4]	.25 hours	6.52
Material Costs:		
Registration Certificate		0.10
Postage		0.29
Total Direct Costs		226.47
Indirect Costs:		
Management/Supervisory Time[5]		5.58
Regulatory/Policy Development[6]		1.93
Applicant/Registrant Support[7]		14.49
Total Indirect Costs		22.00
Total Direct and Indirect Costs		248.47

Notes Regarding the Costs Associated With Issuance of a Retail Distributor Registration

[1] Clerical time includes the time required for preparing and mailing out application packages, time for processing applications received, including computer data entry, encoding the application form, filing, and transmitting a copy of the application to the appropriate DEA field office for the registration review process.

[2] The printing cost for application forms of the same format as will be used for chemical registration is $4,500 for 20,000 forms or 22.5 cents per form. The cost for the last printing of the Chemical Handlers Manual was $2,250 for 7,500 copies, or 30 cents per copy.

[3] The Investigator time to conduct the registration review consists of:

2 hours time at the applicant's place of business to review with the applicant the chemical registration and control regulations; review the applicant's existing recordkeeping, reporting and security systems; and discuss customer and trafficking patterns.

.75 hours to conduct the necessary background and record checks of the applicant, owner and employees.

.75 hours to prepare the reports regarding the results of the registration review.

[4] The clerical time spent during the registration review includes the time necessary to approve the registration, initiate issuance of the registration certificate, and file copies of the report and application.

[5] Management/Supervisory time is that time spent by management and supervisory personnel in the overall development and maintenance of the registration program, including establishment of program priorities and policy, resource allocation, and administrative direction. The following positions are involved:

Deputy Assistant Administrator and Deputy Director of the Office of Diversion Control—.05 work year each—$14,619.

Chief and Deputy Chief Chemical Operations Section—.1 work year each—$27,651.

Chief, Liaison and Policy Section—.1 work year—$11,853.

Chief, Policy Unit—.1 work year—$10,045.

Total—$64,168.

Because the Management/Supervisory costs are related to the general operation of the registration program, they must be averaged across the entire applicant population. For 11,500 applicants, the average cost would be $5.58.

[6] Regulatory and policy development time consists of .25 work year of a program analyst time for drafting new/amended regulations and FEDERAL REGISTER notices, issuance of policy statements and directives related to the registration program and responding to registrant queries regarding registration matters. This time is for general chemical registration program purposes and must be spread equally across the applicant population. The cost of that time, $22,202, divided by 11,500 applicants equals $1.93.

[7] Applicant/Registrant support time will consist of 2 work years of Diversion Investigator time, which will be dedicated to providing technical assistance, advice and informational materials to the industry to assist in complying with the registration, recordkeeping and reporting requirements. The total cost for 2 work years of Diversion Investigator time is $166,616, divided by 11,500 applicants equals $14.49.

COSTS FOR PROCESSING AN APPLICATION AND ISSUING A NON-RETAIL REGISTRATION

Direct Costs:		
Clerical Time [1]	.5 hour	$13.05
Material Costs:[2]		
Application Form		0.22
Postage		0.39
Chemical Handlers Manual		0.30
Registration Certificate		0.10
Postage		0.29
Investigator Time [3]	14 hours	558.88
Total Direct Costs		573.23
Indirect Costs		
Management/Supervisory Time [4]		5.58
Regulatory/Policy Development [5]		1.93
Applicant/Registrant Support [6]		14.49
Total Indirect Costs		22.00
Total Direct and Indirect Costs		595.23

Notes Regarding the Costs Associated With Issuance of a Non-Retail Registration

[1] Clerical time includes the time required for preparing and mailing out application packages, time for processing applications received, including computer data entry, encoding the application form, filing, and transmitting a copy of the application to the appropriate DEA field office for the registration review process. Following the registration review, time is required to approve the registration, initiate issuance of the registration certificate, and file copies of the report and application.

[2] The printing cost for application forms of the same format as will be used for chemical registration is $4,500 for 20,000 forms or 22.5 cents per form. The cost for the last printing of the Chemical Handlers Manual was $2,250 for 7,500 copies, or 30 cents per copy.

[3] The investigator time to conduct the registration review consists of:

10 hours, 5 hours time each for two investigators, at the applicants place of business to review with the applicant the chemical registration and control regulations; review the applicant's existing recordkeeping, reporting and security systems; and discuss customer and trafficking patterns.

2 hours for travel to and from the applicant's location.

1 hour to conduct the necessary background and record checks of the applicant, owner and employees.

1 hour to prepare the reports regarding the results of the registration review.

[4] Management/Supervisory time is that time spent by management and supervisory personnel in the overall development and maintenance of the registration program, including establishment of program priorities and policy, resource allocation, and administrative direction. The following positions are involved:

Deputy Assistant Administrator and Deputy Director of the Office of Diversion Control—.05 work year each—$14.619.

Chief and Deputy Chief Chemical Operations Section—.1 work year each—$27,651.

Chief, Liaison and Policy Section—.1 work year—$11,853.

Chief, Policy Unit—.1 work year—$10,045.

Total Costs—$64,168.

Because the Management/Supervisory costs are related to the general operation of the registration program, they must be averaged across the entire applicant population. For 11,500 applicants, the average cost would be $5.58.

[5] Regulatory and policy development time consists of .25 work year of a program analyst time for drafting new/amended regulations and Federal Register notices, issuance of policy statements and directives related to the registration program and responding to registrant queries regarding registration matters. This time is for general chemical registration program purposes and must be spread equally across the applicant population. The cost of that time, $22,202, divided by 11,500 applicants equals $1.93.

[6] Applicant/Registrant Support time will consist of 2 work years of Diversion Investigator time, which will be dedicated to providing technical assistance, advice and informational materials to the industry to assist in complying with the registration, recordkeeping and reporting requirements. The total cost for 2 work years of Diversion Investigator time is $166,616, divided by 11,500 applicants equals $14.49.

COSTS FOR PROCESSING A RETAIL REREGISTRATION APPLICATION

Direct Costs:		
Clerical Time[1]	.25 hours	$6.52
Material Costs:[2]		
Forms		.45
Postage		.68
Total Direct Costs		7.65
Indirect Costs:		
Management/Supervisory Time[3]		18.33
Regulatory/Policy Development[4]		6.34
Follow-up Investigation Time[5]		83.30
Total Indirect Costs		107.97
Total Direct and Indirect Costs		115.62

Notes Regarding the Costs Associated With a Retail Distributor Reregistration

[1] Clerical time includes the time required for preparing and mailing out application packages, time for processing applications received, including computer data entry, encoding the application form, filing, and preparing the fee for deposit.

[2] The forms cost covers both the reregistration application form and the registration certificate. Postage is for mailing the reregistration application and the registration certificate.

[3] Management/Supervisory time is that time spent by management and supervisory personnel in the overall development and maintenance of the registration program, including establishment of program priorities and policy, resource allocation, and administrative direction. The following positions are involved:

Deputy Assistant Administrator and Deputy Director of the Office of Diversion Control—.05 work year each—$14,619.
Chief and Deputy Chief Chemical Operations Section—.1 work year each—$27,651.
Chief, Liaison and Policy Section—.1 work year—$11,853.
Chief, Policy Unit—.1 work year—$10,045.
Total Costs—$64,168.

Because the Management/Supervisory costs are related to the general operation of the registration program, they must be averaged across the entire reregistration applicant populations. For the initial reregistration year, DEA anticipates receiving 3,500 retail and non-retail reregistration applications. The average cost per application would be $18.33.

[4] Regulatory and policy development time consists of .25 work year of a program analyst time for drafting new/amended regulations and Federal Register notices, issuance of policy statements and directives related to the registration program and responding to registrant queries regarding registration matters. This time is for general chemical registration program purposes and must be spread equally across the reregistration applicant population. The cost of that time, $22,202, divided by 3,500 applicants equals $6.34.

[5] DEA will conduct follow-up investigations of retail registrants to ensure that they are complying with the chemical control requirements. The investigations will consist of a comprehensive review of each registrant's records, reporting systems and security provisions. Each investigation will require on-site record reviews; transaction follow-ups, including purchaser verification and record checks; travel; and report preparation. Based on present estimates, DEA anticipates that all such investigations combined will require 2 work years of Diversion Investigator time. The total cost for 2 work years of Diversion Investigator time is $166,616, divided by 2,000 retail reregistration applicants equals $83.30.

COSTS FOR PROCESSING A NON-RETAIL REREGISTRATION APPLICATION

Direct Costs:		
Clerical Time[1]	.25 hours	$6.52
Material Costs[2]		
Forms		.45
Postage		.68
Total Direct Costs		7.65
Indirect Costs		
Management/Supervisory Time[3]		18.33
Regulatory/Policy Development[4]		6.34
Follow-up Investigation Time[5]		444.31
Total Indirect Costs		468.98
Total Direct and Indirect Costs		476.63

Notes Regarding the Costs Associated With a Non-Retail Registration

[1] Clerical time includes the time required for preparing and mailing out application packages, time for processing applications received, including computer data entry, encoding the application form, filing, and preparing the fee for deposit.

[2] The forms cost covers both the reregistration application form and the registration certificate. Postage is for mailing the reregistration application and the registration certificate.

[3] Management/Supervisory time is that time spent by management and supervisory personnel in the overall development and maintenance of the registration program including establishment of program priorities and policy, resource allocation, and administrative direction. The following positions are involved:

Deputy Assistant Administrator and Deputy Director of the Office of Diversion Control—.05 work year each—$14,619.
Chief and Deputy Chief Chemical Operations Section—.1 work year each—$27,651.
Chief, Liaison and Policy Section—.1 work year—$11,853
Chief, Policy Unit—.1 work year—$10,045.
Total Costs—$64,168.

Because the Management/Supervisory costs are related to the general operation of the registration program, they must be averaged across the entire reregistration applicant population. For the initial renewal year, DEA anticipates receiving 3,500 retail and non-retail reregistration applications. The average cost per applicant would be $18.33.

[4] Regulatory and policy development time consists of .25 work year of a program analyst time for drafting new/amended regulations and Federal Register notices, issuance of policy statements and directives related to the registration program and responding to registrant queries regarding registration matters. This time is for general chemical registration program purposes and must be spread equally across the reregistration applicant population. The cost of that time, $22,202, divided by 3,500 reregistration applicants, 3,500, equals $6.34.

[5] DEA will conduct follow-up investigations of approximately 75 non-retail registrants to ensure that registrants are complying with the chemical control requirements and that chemicals are not being distributed to persons which wishing to divert them. The investigations will consist of a comprehensive review of each registrant's records, reporting systems and security provisions. Each investigation will require comprehensive on-site review of the registrant's records; verification of transactions and purchasers, including record checks of and visits to purchasers; travel; and report preparation. Based on current estimates, DEA anticipates that all such follow-up investigations combined will require 8 workyears of Diversion Investigator time. The total cost for 8 workyears of Diversion Investigator time is $666,464, divided by 1,500 non-retail reregistration applicants equals $444.31.

V. Regulatory Flexibility and Small Business Impact

DEA has examined the impact of the DCDCA and this proposed rule in the light of Executive Order 12866 and the Regulatory Flexibility Act (PL 96–354). DEA has identified approximately 1,500 firms or persons, other than retail distributors, who handle List I chemicals. These non-retail chemical firms are generally known to DEA because most have been subject to the recordkeeping and reporting requirements of the CDTA for a number of years. Independent retail distributors, however, are primarily small business entities.

DEA has found that in addition to the traditional sources of distribution (i.e., hospitals, pharmacies, pharmaceutical manufacturers and distributors, etc.), independently owned and operated retail outlets such as convenience stores, liquor stores, truck stops, gas stations, and nutrition centers engage in sales to the public of the single entity drug products that are not regulated. Based on information received from various distributors, the potential affected population of retail outlets that handled the single entity drug products prior to the April 1994 effective date of the DCDCA, could be as high as 100,000. How many of these will choose to continue their sales of the single entity drug products and be subject to the registration, recordkeeping and reporting requirements is unclear, due to such factors as: (1) The introduction of state laws making drug products containing ephedrine prescription drugs, (2) the availability of alternative products which are not subject to the chemical regulations at this time, and (3) the intent of the DCDCA to eliminate sales by those persons who have been supplying clandestine laboratories.

The DCDCA requires that any person wishing to distribute, import, or export a List I chemical must obtain a registration from DEA for each location at which such activities are carried out, prior to conducting such activities. The statutory basis for this requirement is found in Sections 822 and 957 of the CSA, as amended by the DCDCA. Therefore, a separate registration must be issued for each location pursuant to the factors regarding the public interest set forth in Section 823(h) of the CSA. Prior to taking final action on an application, DEA will conduct an on-site investigation at each location for which registration is requested. The guidelines set forth in the Office of management and Budget (OMB) Circular A–25 require that the costs of the registration process must be recovered through application fees charged to the applicants. As noted in the fee analysis, the preregistration investigation for retail distributor applicants will be less intensive than the investigation for other chemical applicants, due to the limited scope and volume of a retail distributor's chemical activities. As a result, the retail distributor's fees will be significantly less than those for non-retail chemical applicants. In addition to the cost of regisuration and reregistration, it is estimated that applicants would be required to expend one-half hour per year completing the appropriate application for registration or reregistration.

In reviewing the implementation of the registration requirement, DEA gave consideration to the specific purposes for requiring registration and the nature of the problem of diversion of List I chemicals and made the following determinations:

1. DEA will not require that persons already registered to engage in certain activities with controlled substances obtain a separate registration for similar activities with FDA approved drug products which are regulated as List I chemicals. A principal reason for requiring registration is to allow DEA to determine the fitness of the applicant to conduct a specified activity and to allow DEA, if circumstances require, to prohibit the applicant from engaging in the activity. Persons required to register with DEA to engage in activities with controlled substances are subject to Federal and State investigations of their fitness which exceed the requirements for registration for List I chemical activities. Further, the proposed regulation allows that DEA may remove any person's exemption from the registration requirement and may, if appropriate, take action against the person's controlled substance registration, if the person engages in activities in violation of the chemical laws and regulations. Accordingly, DEA is proposing in § 1309.25 to exempt persons registered with DEA to handle controlled substances from the requirement to obtain a separate chemical registration for certain similar activities with the regulated FDA approved drug products. The exemption could potentially exempt over 70,000 hospitals, pharmacies, distributors, manufacturers, importers, and exporters of controlled substances who are currently registered with DEA to handle controlled substances.

2. DEA will not require persons who manufacture a List I chemical solely for internal use, with no subsequent distribution or exportation of the chemical, to obtain a chemical registration. DEA has found that such persons have not been a source of any significant diversion of List I chemicals; the primary sources of diversion are through the distribution channels which deal directly with the public. If these manufacturers should later become a source of diversion, the exemption can be removed. DEA is proposing in Section 1309.27 that such manufacturers be exempted from the chemical registration requirement.

DEA has also determined that the requirement that manufacturers of listed chemicals report to DEA annually can be limited without compromising the intent of the requirement. DEA's primary interest in this area is determining the total quantity of each individual listed chemical that is available on the domestic market. Therefore, DEA proposes that only bulk manufacturers of the chemicals need report to DEA; other manufacturers, such as repacker/relabelers, dosage form, etc., do not need to report.

DEA has also considered the impact on small businesses of the application of the existing chemical recordkeeping and reporting requirements to those drug products containing ephedrine which are now regulated as List I chemicals. The recordkeeping and reporting provisions of the CDTA, as set forth in section 830 of the CSA and parts 1310 and 1313 of title 21 of the Code of Federal Regulations, have been in place since 1989 and form the backbone of DEA's chemical control program. The requirements were developed jointly with the chemical industry to provide the necessary information to track chemical transfers while minimizing the recordkeeping and reporting burden on the chemical industry. A retail distributor must keep records that

reflect the name and address of the purchaser, the date of the transaction, the type of chemical and amount being transferred, and the form of identification provided by the purchaser. The requirement to make reports is limited to those transactions that are unusual or suspicious and to thefts or losses of listed chemicals. It is estimated that creating and storing a record will require an average of one minute per record. These recordkeeping procedures are accepted practice in the conduct of legitimate chemical commerce in the years they have been in effect.

DEA is obligated to implement the mandate of Congress as set out in the DCDCA. The DCDCA states that persons who wish to manufacture, distribute, import or export List I chemicals must register with DEA. Further, the DCDCA makes drug products containing ephedrine as the sole medicinal ingredient subject to such registration, as well as to the existing chemical recordkeeping and reporting requirements. Consideration was given to exempting retail distributors from the registration, recordkeeping and reporting requirements. However, such an action would negate the purpose of the DCDCA by leaving a significant portion of the sales of regulated ephedrine products unregulated. Controlling the diversion of these products requires monitoring and recordkeeping by all portions of the industry. DEA has proposed steps to lessen the impact on retail distributors of the DCDCA's requirements, while simultaneously carrying out the chemical control mandate of the DCDCA.

In addition to these proposed regulations to implement the DCDCA, DEA has published two other notices that should be given consideration by parties concerned with the DCDCA. The first, published on March 17, 1994 (59 FR 12562), proposes removal of the established threshold for ephedrine to reduce the diversion of ephedrine to clandestine laboratories for the illicit manufacture of methamphetamine and methcathinone. The second, published on March 24, 1994 (59 FR 13881), establishes a temporary exemption from the registration requirements for persons who manufacture, distribute, import or export List I chemicals.

This notice proposes two new information collections: The DEA 510 and 510a application forms for registration and reregistration, and the reports required from certain manufacturers of listed chemicals. DEA is submitting a request to the Office of Management and Budget for review and approval of these new collections pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principals of Regulation. The DEA has determined that this rule is a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

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

List of Subjects

21 CFR Part 1307

Drug traffic control.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and List II chemicals, Security measures.

21 CFR Part 1310

Drug traffic control, List I and List II chemicals, Reporting and recordkeeping requirements.

21 CFR Part 1313

Drug traffic control, Exports, Imports, List I and List II chemicals, Transshipment and in-transit shipments.

21 CFR Part 1316

Administrative practice and procedure, Drug traffic control, Research, Seizures and forfeitures.

I. For the reasons set out above, it is proposed that 21 CFR part 1307 be amended as follows:

PART 1307—[AMENDED]

1. The authority citation for part 1307 continues to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b), unless otherwise noted.

2. Section 1307.03 is proposed to be amended by revising the introductory language to read as follows:

§ 1307.03 Exceptions to regulations.

Any person may apply for an exception to the application of any provision of parts 1301–1313, or 1316 of this chapter by filing a written request stating the reasons for such exception. Requests shall be filed with the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537. The Administrator may grant an exception in his discretion, but in no case shall he be required to grant an exception to any person which is not otherwise required by law or the regulations cited in this section.

II. 21 CFR part 1309 is proposed to be added to read as follows:

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS AND EXPORTERS OF LIST I CHEMICALS

General Information

Sec.
1309.01 Scope of part 1309.
1309.02 Definitions.
1309.03 Information; special instructions.

Fees for Registration and Reregistration

1309.11 Fee Amounts.
1309.12 Time and Method of Payment; refund.

Requirements for Registration

1309.21 Persons required to register.
1309.22 Separate registration for independent activities.
1309.23 Separate registration for separate locations.
1309.24 Exemption of agents and employees.
1309.25 Exemption of certain controlled substance registrants.
1309.26 Exemption of law enforcement officials.
1309.27 Exemption of certain manufacturers.

Applications for Registration

1309.31 Time for application for registration: expiration date.
1309.32 Application forms; contents, signature.
1309.33 Filing of application; joint filings.
1309.34 Acceptance for filing; defective applications.
1309.35 Additional information.
1309.36 Amendments to and withdrawals of applications.

Action on Applications for Registration: Revocation or Suspension of Registration

1309.41 Administrative review generally.
1309.42 Certificate of registration; denial of registration.
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Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

General Information

§ 1309.01 Scope of part 1309.

Procedures governing the registration of manufacturers, distributors, importers and exporters of List I chemicals pursuant to sections 102, 302, 303, 1007 and 1008 of the Act (21 U.S.C. 802, 822, 823, 957 and 958) are set forth generally by those sections and specifically by the sections of this part.

§ 1309.02 Definitions.

(a) The Term *Act* means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) The term *hearing* means any hearing held pursuant to the part for the granting, denial, revocation, or suspension of a registration pursuant to sections 303 and 304 of the Act (21 U.S.C. 823–824).

(c) The term *person* includes any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity.

(d) The terms *register* and *registration* refer only to registration required and permitted by sections 302 and 1007 of the Act (21 U.S.C. 822 and 957).

(f) The term *registrant* means any person who is registered pursuant to either section 303 or section 1008 of the Act (21 U.S.C. 823 and 958).

(g) The term *retail distributor* means a distributor whose List I chemical activities are restricted to the sale of drug products that are regulated as List I chemicals pursuant to § 1310.01(f)(1)(iv), directly to walk-in customers for personal use.

Any term not defined in this section shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or in §§ 1310.01 and 1313.02 of this chapter.

§ 1309.03 Information; special instructions.

Information regarding procedures under these rules and instructions supplementing these rules will be furnished upon request by writing to the Drug Enforcement Administration, Chemical Operations Section, Office of Diversion Control, Washington, DC 20537.

Fees for Registration and Reregistration

§ 1309.11 Fee amounts.

(a) For each initial registration to manufacture for distribution, distribute, import, or export the applicant shall pay a fee of $595 for an annual registration.

(b) For each reregistration to manufacture for distribution, distribute, import, or export, the registrant shall pay a fee of $477 for an annual registration.

(c) For each initial registration to conduct business as a retail distributor the applicant shall pay an application processing fee of $7 and an investigation fee of $248, for an annual registration.

(d) For each reregistration to conduct business as a retail distributor the registrant shall pay a fee of $116.

§ 1309.12 Time and method of payment; refund.

(a) For each application for registration or reregistration to manufacture for distribution, distribute, import, or export the applicant shall pay the fee when the application for registration or reregistration is submitted for filing.

(b) For retail distributor initial applications, the applicant shall pay the application processing fee when the application for registration is submitted for filing. The investigation fee shall be paid within 30 days after DEA notifies the applicant that the preregistration investigation has been scheduled.

(c) For retail distributor reregistration applications, the registrant shall pay the fee when the application for reregistration is submitted for filing.

(d) Payments should be made in the form of a personal, certified, or cashier's check or money order made payable to "Drug Enforcement Administration." Payments made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. These application fees are not refundable.

Requirements for Registration

§ 1309.21 Persons required to register.

(a) Every person who distributes, imports, or exports any List I chemical, other than those List I chemicals contained in a product exempted under § 1310.01(f)(1)(iv) of this chapter, or who proposes to engage in the distribution, importation, or exportation of any List I chemical, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1309.24–1309.27. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation distributing List I chemicals is not required to obtain a registration.)

(b) Every person who distributes or exports a List I chemical they have manufactured, other than a List I chemical contained in a product exempted under § 1310.01(f)(1)(iv) of this chapter, or proposes to distribute or export a List I chemical they have manufactured, shall obtain annually a registration specific to the List I chemicals to be handled, unless exempted by law or pursuant to §§ 1309.24–1309.27.

§ 1309.22 Separate registration for independent activities.

(a) The following groups of activities are deemed to be independent of each other:

(1) Retail distributing of List I chemicals;

(2) Non-Retail distributing of List I chemicals;

(3) Importing List I chemicals; and

(4) Exporting List I chemicals.

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, unless otherwise exempted by the Act or §§ 1309.24–1309.26, except that a person registered to import any List I chemical shall be authorized to distribute that List I chemical, but no other chemical that the person is not registered to import.

§ 1309.23 Separate registration for separate locations.

(a) A separate registration is required for each principal place of business at one general physical location where List I chemicals are distributed, imported, or exported by a person.

(b) The following locations shall be deemed to be places not subject to the registration requirement:

(1) A warehouse where List I chemicals are stored by or on behalf of a registered person, unless such chemicals are distributed directly from such warehouse to locations other than the registered location from which the chemicals were originally delivered; and

(2) An office used by agents of a registrant where sales of List I chemicals are solicited, made, or supervised but

which neither contains such chemicals (other than chemicals for display purposes) nor serves as a distribution point for filling sales orders.

§ 1309.24 Exemption of agents and employees.

The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if such agent or employee is acting in the usual course of his or her business or employment.

§ 1309.25 Exemption of certain controlled substance registrants.

(a) The requirement of registration is waived for any person who distributes a product containing a List I chemical that is regulated pursuant to § 1310.01(f)(1)(iv) of this chapter, if that person is registered with the Administration to manufacture, distribute or dispense a controlled substance.

(b) The requirement of registration is waived for any person who imports or exports a product containing a List I chemical that is regulated pursuant to § 1310.01(f)(1)(iv) of this chapter, if that person is registered with the Administration to engage in the same activity with a controlled substance.

(c) The Administrator may, upon finding that continuation of the waiver would not be in the public interest, suspend or revoke a person's waiver pursuant to the procedures set forth in §§ 1309.43–1309.46 and 1309.51–1309.57. In considering the revocation or suspension of a person's waiver, the Administrator shall also consider whether action to revoke or suspend the person's controlled substance registration pursuant to 21 U.S.C. 824 is warranted.

(d) Any person exempted from the registration requirement under this section shall comply with the security requirements set forth in § 1309.71–1309.73 and the recordkeeping and reporting requirements set forth under parts 1310 and 1313 of this chapter.

§ 1309.26 Exemption of law enforcement officials.

(a) The requirement of registration is waived for the following persons in the circumstances described in this section:

(1) Any officer or employee of the Administration, any officer of the U.S. Customs Service, any officer or employee of the United States Food and Drug Administration, any other Federal officer who is lawfully engaged in the enforcement of any Federal law relating to listed chemicals, controlled substances, drugs or customs, and is duly authorized to possess and distribute List I chemicals in the course of official duties; and

(2) Any officer or employee of any State, or any political subdivision or agency thereof, who is engaged in the enforcement of any State or local law relating to listed chemicals and controlled substances and is duly authorized to possess and distribute List I chemicals in the course of his official duties.

(b) Any official exempted by this section may, when acting in the course of official duties, possess any List I chemical and distribute any such chemical to any other official who is also exempted by this section and acting in the course of official duties.

§ 1309.27 Exemption of certain manufacturers.

The requirement of registration is waived for any manufacturer of a List I chemical, if that chemical is produced solely for internal consumption by the manufacturer and there is no subsequent distribution or exportation of the List I chemical.

Application for Registration

§ 1309.31 Time for application for registration; expiration date.

(a) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is approved and a Certificate of Registration is issued by the Administrator to such person.

(b) Any person who is registered may apply to be reregistered not more than 60 days before the expiration date of his registration.

(c) At the time a person is first registered, that person shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last day of the month designated for that group. In assigning any of the above persons to a group, the Administration may select a group the expiration date of which is less than one year from the date such business activity was registered. If the person is assigned to a group which has an expiration date less than eleven months from the date of which the person is registered, the registration shall not expire until one year from that expiration date; in all other cases, the registration shall expire on the expiration date following the date on which the person is registered.

§ 1309.32 Application forms; contents; signature.

(a) Any person who is required to be registered pursuant to § 1309.21 and is not so registered, shall apply on DEA Form 510.

(b) Any person who is registered pursuant to § 1309.21, shall apply for reregistration on DEA Form 510a.

(c) DEA Form 510 may be obtained at any divisional office of the Administration or by writing to the Registration Unit, Drug Enforcement Administration, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. DEA Form 510a will be mailed to each List I chemical registrant approximately 60 days before the expiration date of his or her registration; if any registered person does not receive such forms within 45 days before the expiration date of the registration, notice must be promptly given of such fact and DEA Form 510a must be requested by writing to the Registration Unit of the Administration at the foregoing address.

(d) Each application for registration shall include the Administration Chemical Code Number, as set forth in § 1310.02 of this chapter, for each List I chemical to be distributed, imported, or exported.

(e) Registration shall not entitle a person to engage in any activity with any List I chemical not specified in his or her application.

(f) Each application shall include all information called for in the form, unless the item is not applicable, in which case this fact shall be indicated.

(g) Each application, attachment, or other document filed as part of an application, shall be signed by the applicant, if an individual; by a partner of the applicant, if a partnership; or by an officer of the applicant, if a corporation, corporate division, association, trust or other entity. An applicant may authorize one or more individuals, who would not otherwise be authorized to do so, to sign applications for the applicant by filing with the application or other document a power or attorney for each such individual. The power of attorney shall be signed by a person whose is authorized to sign applications under this paragraph and shall contain the signature of the individual being authorized to sign the application or other document. The power of attorney shall be valid until revoked by the applicant.

§ 1309.33 Filing of application; joint filings.

(a) All applications for registration shall be submitted for filing to the Registration Unit, Drug Enforcement

Administration, Chemical Registration/ODC, Post Office Box 2427, Arlington, Virginia 22202–2427. The appropriate registration fee and any required attachments must accompany the application.

(b) Any person required to obtain more than one registration may submit all applications in one package. Each application must be complete and must not refer to any accompanying application for required information.

§ 1309.34 Acceptance for filing; defective applications.

(a) Applications submitted for filing are dated upon receipt. If found to be complete, the application will be accepted for filing. Applications failing to comply with the requirements of this part will not generally be accepted for filing. In the case of minor defects as to completeness, the Administrator may accept the application for filing with a request to the applicant for additional information. A defective application will be returned to the applicant within 10 days of receipt with a statement of the reason for not accepting the application for filing. A defective application may be corrected and resubmitted for filing at any time.

(b) Accepting an application for filing does not preclude any subsequent request for additional information pursuant to § 1309.35 and has no bearing on whether the application will be granted.

§ 1309.35 Additional information.

The Administrator may require an applicant to submit such documents or written statements of fact relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the Administrator in granting or denying the application.

§ 1309.36 Amendments to and withdrawals of applications.

(a) An application may be amended or withdrawn without permission of the Administrator at any time before the date on which the applicant receives an order to show cause pursuant to § 1309.46. An application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.

(b) After an application has been accepted for filing, the request by the applicant that it be returned or the failure of the applicant to respond to official correspondence regarding the application, including a request that the applicant submit the required fee, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application.

Action of Applications for Registration: Revocation or Suspension of Registration

§ 1309.41 Administrative review generally.

The Administrator may inspect, or cause to be inspected, the establishment of an applicant or registrant, pursuant to subpart A of part 1316 of this chapter. The Administrator shall review the application for registration and other information gathered by the Administrator regarding an applicant in order to determine whether the applicable standards of section 303 of the Act (21 U.S.C. 823) have been met by the applicant.

§ 1309.42 Certificate of registration; denial of registration.

(a) The Administrator shall issue a Certificate of Registration (DEA Form 511) to an applicant if the issuance of registration or reregistration is required under the applicable provisions of section 303 of the Act (21 U.S.C. 823). In the event that the issuance of registration or reregistration is not required, the Administrator shall deny the application. Before denying any application, the Administrator shall issue an order to show cause pursuant to § 1309.46 and, if requested by the applicant, shall hold a hearing on the application pursuant to § 1309.51.

(b) The Certificate of Registration (DEA Form 511) shall contain the name, address, and registration number of the registrant, the activity authorized by the registration, the amount of fee paid, and the expiration date of the registration. The registrant shall maintain the certificate of registration at the registered location in a readily retrievable manner and shall permit inspection of the certificate by any official, agent or employee of the Administration or of any Federal, State, or local agency engaged in enforcement of laws relating to List I chemicals or controlled substances.

§ 1309.43 Suspension or revocation of registration.

(a) The Administrator may suspend any registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)) for any period of time he determines.

(b) The Administrator may revoke any registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)).

(c) Before revoking or suspending any registration, the Administrator shall issue an order to show cause pursuant to § 1309.46 and, if requested by the registrant, shall hold a hearing pursuant to § 1309.51. Notwithstanding the requirements of this Section, however, the Administrator may suspend any registration pending a final order pursuant to § 1309.44.

(d) Upon service of the order of the Administrator suspending or revoking registration, the registrant shall immediately deliver his or her Certificate of Registration to the nearest office of the Administration.

§ 1309.44 Suspension of registration pending final order.

(a) The Administrator may suspend any registration simultaneously with or at any time subsequent to the service upon the registrant of an order to show cause why such registration should not be revoked or suspended, in any case where he finds that there is an imminent danger to the public health or safety. If the Administrator so suspends, he shall serve with the order to show cause pursuant to § 1309.46 an order of immediate suspension that shall contain a statement of his findings regarding the danger to public health or safety.

(b) Upon service of the order of immediate suspension, the registrant shall promptly return his Certificate of Registration to the nearest office of the Administration.

(c) Any suspension shall continue in effect until the conclusion of all proceedings upon the revocation or suspension, including any judicial review thereof, unless sooner withdrawn by the Administrator or dissolved by a court of competent jurisdiction. Any registrant whose registration is suspended under this section may request a hearing on the revocation or suspension of his registration at a time earlier than specified in the order to show cause pursuant to § 1309.46, which request shall be granted by the Administrator, who shall fix a date for such hearing as early as reasonably possible.

§ 1309.45 Extension of registration pending final order.

In the event that an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no

order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator so issues his order. The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

§ 1309.46 Order to show cause.

(a) If, upon examination of the application for registration from any applicant and other information gathered by the Administration regarding the applicant, the Administrator is unable to make the determinations required by the applicable provisions of section 303 of the Act (21 U.S.C. 823) to register the applicant, the Administrator shall serve upon the applicant an order to show cause why the application for registration should not be denied.

(b) If, upon information gathered by the Administration regarding any registrant, the Administrator determines that the registration of such registrant is subject to suspension or revocation pursuant to section 304 of the Act (21 U.S.C. 824), the Administrator shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to appear before the Administrator at a time and place stated in the order, which shall not be less than 30 days after the date of receipt of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted.

(d) Upon receipt of an order to show cause, the applicant or registrant must, if he desires a hearing, file a request for a hearing pursuant to § 1309.54. If a hearing is requested, the Administrator shall hold a hearing at the time and place stated in the order, pursuant to § 1309.51.

(e) When authorized by the Administrator, any agent of the Administration may serve the order to show cause.

Hearings

§ 1309.51 Hearings generally.

(a) In any case where the Administrator shall hold a hearing on any registration or application therefor, the procedures for such hearing shall be governed generally by the adjudication procedures set forth in the Administrative Procedure Act (5 U.S.C. 551–559) and specifically by sections 303 and 304 of the Act (21 U.S.C. 823–824), by §§ 1309.51–1309.57, and by the procedure for administrative hearings under the Act set forth in §§ 1316.41–1316.67 of this chapter.

(b) Any hearing under this part shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Act or any other law of the United States.

§ 1309.52 Purpose of hearing.

If requested by a person entitled to a hearing, the Administrator shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the denial, revocation, or suspension of any registration. Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

§ 1309.53 Waiver or modification of rules.

The Administrator or the presiding officer (with respect to matters pending before him) may modify or waive any rule in this party by notice in advance of the hearing, if he determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of modification or waiver shall be made a part of the record of the hearing.

§ 1309.54 Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to §§ 1309.42 and 1309.43 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause, file with the Administrator a written request for a hearing in the form prescribed in Section 1316.47 of this chapter.

(b) Any person entitled to a hearing pursuant to §§ 1309.42 and 1309.43, within the period permitted for filing a request for a hearing, file with the Administrator a waiver of an opportunity for a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(c) If any person entitled to a hearing pursuant to §§ 1309.42 and 1309.43 fails to file a request for a hearing, or if he so files and fails to appear at the hearing, he shall be deemed to have waived his opportunity for the hearing, unless he shows good cause for such failure.

(d) If any person entitled to a hearing waives or is deemed to waive his or her opportunity for the hearing, the Administrator may cancel the hearing, if scheduled, and issue his final order pursuant to § 1309.57 without a hearing.

§ 1309.55 Burden of proof.

(a) At any hearing for the denial of a registration, the Administrator shall have the burden of proving that the requirements for such registration pursuant to section 303 of the Act (21 U.S.C. 823) are not satisfied.

(b) At any hearing for the revocation or suspension of a registration, the Administrator shall have the burden of proving that the requirements for such revocation or suspension pursuant to section 304(a) of the Act (21 U.S.C. 824(a)) are satisfied.

§ 1309.56 Time and place of hearing.

The hearing will commence at the place and time designated in the order to show cause or notice of hearing published in the **Federal Register** (unless expedited pursuant to § 1309.44(c)) but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

§ 1309.57 Final order.

As soon as practicable after the presiding officer has certified the record to the Administrator, the Administrator shall cause to be published in the **Federal Register** his final order in the proceeding, which shall set forth the final rule and the findings of fact and conclusions of law upon which the rule is based. This order shall specify the date on which it shall take effect, which date shall not be less than 30 days from the date of publication in the **Federal Register** unless the Administrator finds that the public interest in the matter necessitates an earlier effective date, in which case the Administrator shall specify in the order his findings as to the conditions which led him to conclude that an earlier effective date was required.

Modification, Transfer and Termination of Registration

§ 1309.61 Modification in registration.

Any registrant may apply to modify his or her registration to authorize the handling of additional List I chemicals or to change his or her name or address, by submitting a letter of request to the Drug Enforcement Administration, Chemical Registration/ODC, Post Office Box 2427, Arlington, Virginia 22202–2427. The letter shall contain the registrant's name, address, and registration number as printed on the certificate of registration, and the List I chemicals to be added to his registration or the new name or address and shall be signed in accordance with § 1309.32(g). No fee shall be required to be paid for the modification. The request for modification shall be handled in the same manner as an application for registration. If the modification in registration is approved, the Administrator shall issue a new certificate of registration (DEA Form 511) to the registrant, who shall maintain it with the old certificate of registration until expiration.

§ 1309.62 Termination of registration.

The registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice. Any registrant who ceases legal existence or discontinues business or professional practice shall notify the Administrator promptly of such fact.

§ 1309.63 Transfer of registration.

No registration or any authority conferred thereby shall be assigned or otherwise transferred except upon such conditions as the Administrator may specifically designate and then only pursuant to his written consent.

Security Requirements

§ 1309.71 General security requirements.

(a) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of List I chemicals. Specific attention shall be paid to storage of and controlling access to List I chemicals as follows:

(1) Chemicals shall be stored in containers sealed in such a manner as to indicate any attempts at tampering with the container. Where chemicals cannot be stored in sealed containers, access to the chemicals should be controlled through physical means or through human or electronic monitoring.

(2) In retail settings open to the public where drugs containing List I chemicals that are regulated pursuant to § 1310.01(f)(1)(iv) of this chapter are distributed, such drugs will be stocked behind a counter where only employees have access.

(b) In evaluating the effectiveness of security controls and procedures, the Administrator shall consider the following factors:

(1) The type, form, and quantity of List I chemicals handled;

(2) The location of the premises and the relationship such location bears on the security needs;

(3) The type of building construction comprising the facility and the general characteristics of the building or buildings;

(4) The availability of electric detection and alarm systems;

(5) The extent of unsupervised public access to the facility;

(6) The adequacy of supervision over employees having access to List I chemicals;

(7) The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel in areas where List I chemicals are processed or stored;

(8) The adequacy of the registrant's or applicant's systems for monitoring the receipt, distribution, and disposition of List I chemicals in its operations.

(c) Any registrant or applicant desiring to determine whether a proposed system of security controls and procedures is adequate may submit materials and plans regarding the proposed security controls and procedures either to the Special Agent in Charge in the region in which the security controls and procedures will be used, or to the Chemical Operations Section Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

§ 1309.72 Felony conviction; employer responsibilities.

(a) The registrant shall not employ, as an agent or employee who has access to List I chemicals, any person who has been convicted of a felony offense relating to controlled substances or listed chemicals or who has, at any time, had an application for registration with the DEA denied, had a DEA registration revoked or has surrendered a DEA registration for cause. For purposes of this subsection, the term "for cause" means a surrender in lieu of, or as a consequence of, any Federal or State administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances or listed chemicals.

(b) It is the position of DEA that employees who possess, sell, use or divert listed chemicals or controlled substances will subject themselves not only to State or Federal prosecution for any illicit activity, but shall also immediately become the subject of independent action regarding their continued employment. The employer will assess the seriousness of the employee's violation, the position of responsibility held by the employee, past record of employment, etc., in determining whether to suspend, transfer, terminate or take other action against the employee.

§ 1309.73 Employee responsibility to report diversion.

Reports of listed chemical diversion by fellow employees is not only a necessary part of an overall employee security program but also serves the public interest at large. It is, therefore, the position of DEA that an employee who has knowledge of diversion from his employer by a fellow employee has an obligation to report such information to a responsible security official of the employer. The employer shall treat such information as confidential and shall take all reasonable steps to protect the confidentiality of the information and the identity of the employee furnishing information. A failure to report information of chemical diversion will be considered in determining the feasibility of continuing to allow an employee to work in an area with access to chemicals. The employer shall inform all employees concerning this policy.

III. 21 CFR Part 1310 is proposed to be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.01 is proposed to be amended by revising paragraphs (b), (c), (d), (e), (f) and (g), redesignating paragraph (k) as paragraph (m) and adding new paragraphs (k) and (l) as follows:

§ 1310.01 Definitions.

* * * * *

(b) The term *listed chemical* means any List I chemical or List II chemical.

(c) The term *List I chemical* means a chemical specifically designated by the Administrator in Section 1310.02(a) that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of the Act and is important to the manufacture of a controlled substance.

(d) The term *List II chemical* means a chemical, other than a List I chemical, specifically designated by the

Administrator in § 1310.02(b) that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of the Act.

(e) The term *regulated person* means any individual, corporation, partnership, association, or other legal entity who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine, or who acts as a broker or trader for an international transaction involving a listed chemical, tableting machine, or encapsulating machine.

(f) The term *regulated transaction* means:

(1) A distribution, receipt, sale, or importation, or exportation of a listed chemical, or an international transaction involving shipment of a listed chemical, or if the Administrator establishes a threshold amount for a specific listed chemical, a threshold amount as determined by the Administrator, which includes a cumulative threshold amount for multiple transactions, of a listed chemical, except that such term does not include:

(i) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person;

(ii) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this part or parts 1309 and 1313 of this chapter;

(iii) Any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Administrator as excluded from this definition as unnecessary for enforcement of the Act;

(iv) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act unless—

(A) The drug contain ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient. For purposes of this paragraph, the term "therapeutically insignificant quantities" shall apply if the product formulation (i.e., the qualitative and quantitative composition of active ingredients within the product) is not listed in any of the following compendiums:

(*1*) *American Pharmaceutical Association (APhA) Handbook of Nonprescription Drugs;*

(*2*) *Drug Facts and Comparisons* (published by Wolters Kluwer Company); or

(*3*) *USP DI* (published by authority of the United States Pharmacopeial Convention, Inc.);

(*4*) Or the product is not listed in § 1310.15 as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in § 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph.

(B) The Administrator has determined that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(C) The quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transaction equals or exceeds the threshold established for that chemical by the Administrator; or

(v) Any transaction in a chemical mixture listed in § 1310.13.

(g) The term *chemical mixture* means a combination of two or more chemical substances, at least one of which is not a listed chemical, except that such term does not include any combination of a listed chemical with another chemical that is present solely as an impurity or which has been created to evade the requirements of the act.

* * * * *

(k) The terms *broker* and *trader* mean any individual, corporation, corporate division, partnership, association, or other legal entity which assists in arranging an international transaction in a listed chemical by—

(1) Negotiating contracts;

(2) Serving as an agent or intermediary; or

(3) Bringing together a buyer and seller, a buyer and transporter, or a seller and transporter.

(l) The term *international transaction* means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

* * * * *

3. Section 1310.02 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1310.02 Substances covered.

The following chemicals have been specifically designated by the Administrator of the Drug Enforcement Administration as the listed chemicals subject to the provisions of this part and parts 1309 and 1313 of this chapter. Each chemical has been assigned the DEA Chemical Code Number set forth opposite it.

(a) List I chemicals:

(1) Anthranilic acid, its esters, and its salts	8530
(2) Benzyl cyanide	8570
(3) Ephedrine, its salts, optical isomers, and salts of optical isomers	8113
(4) Ergonovine and its salts	8675
(5) Ergotamine and its salts	8676
(6) N-Acetylanthranilic acid, its esters, and its salts	8522
(7) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers	8317
(8) Phenylacetic acid, its esters, and its salts	8791
(9) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers	1225
(10) Piperidine and its salts	2704
(11) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers	8112
(12) 3,4-Methylenedioxyphenyl-2-propanone	8502
(13) Methylamine and its salts	8520
(14) Ethylamine and its salts	8678
(15) Propionic anhydride	8328
(16) Insosafrole (Isosafrole)	8704
(17) Safrole	8323
(18) Piperonal	8750
(19) N-Methylephedrine, its salts, optical isomers, and salts of optical isomers (N-Methylephedrine)	8115
(20) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers	8119
(21) Hydriotic acid (Hydriodic Acid)	6695
(22) Benzaldehyde	8256
(23) Nitroethane	6724

(b) List II Chemicals:

(1) Acetic anhydride	8519
(2) Acetone	6532
(3) Benzyl chloride	8568
(4) Ethyl ether	6584
(5) Potassium permanganate	6579
(6) 2-Butanone (or Methyl Ethyl Ketone or MEK)	6714
(7) Toluene	6594
(8) Hydrochloric acid	6545
(9) Sulfuric acid	6552

* * * * *

4. Section 1310.03 is proposed to be amended by redesignating the

introductory text as paragraph (a) and adding a new paragraph (b) as follows:

§ 1310.03 Persons required to keep records and file reports.

(a) * * *

(b) Each regulated person who manufactures a listed chemical shall file reports regarding such manufacture as specified by § 1310.05. However, a manufacturer of a drug product that is exempted under § 1310.01(f)(1)(iv) shall not be required to file reports regarding such manufacture.

5. Section 1310.04 is proposed to be amended by revising paragraphs (a), (b), and (f)(1), introductory text, removing paragraphs (f)(1)(xv), (f)(1)(xxi), and (f)(1)(xxiii); redesignating paragraphs (f)(1) (xvi) through (xx) as (f)(1) (xv) through (xix), paragraph (f)(1) (xxii) as (f)(1) (xx) and paragraph (f)(1) (xxiv) as (f)(1) (xxi); and adding new paragraphs (f)(1) (xxii) and (xxiii), revising (f)(2), introductory test and (f)(2)(iv) to read as follows:

§ 1310.04 Maintenance of records.

(a) Every record required to be kept subject to Section 1310.03 for a List I chemical, a tableting machine, or an encapsulating machine shall be kept by the regulated person for four years after the date of the transaction.

(b) Every record required to be kept subject to Section 1310.03 for List II chemical shall be kept by the regulated person for two years after the date of the transaction.

* * * * *

(f) * * *

(1) List I Chemicals:

Chemical	Threshold by base weight
(i) * * *	
(xxii) Benzaldehyde	4 kilograms.
(xxiii) Nitroethane	2.5 kilograms.

(2) List II Chemicals:

(i) * * *

(iv) Exports, transshipments and international transactions to Designated Countries set forth in Section 1310.08(b).

* * * * *

6. Section 1310.05 is proposed to be amended by redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5), adding a new paragraph (a)(2), revising paragraph (b), and adding a new paragraph (d) to read as follows:

§ 1310.05 Reports.

(a) * * *

(2) Any regulated transaction with a person not registered with DEA who is obtaining within a calendar month and quantity of 375 dosage units or more of a drug product containing ephedrine, which is regulated pursuant to § 1310.01(f)(1)(iv). The requirement to make such reports is waived if a pharmacist employed by the regulated person consults with the purchaser regarding the appropriate uses and dosing of the product for legitimate medical purposes and includes documentation of the consultation in the record of the transaction.

* * * * *

(b) Each report submitted pursuant to paragraphs (a)(1), (a)(3), (a)(4), and (a)(5) of this section shall, whenever possible, be made orally to the DEA Divisional Office for the area in which the regulated person making the report is located at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved and as much in advance of the conclusion of the transaction as possible. Written reports of transactions listed in paragraphs (a)(1), (a)(4) and (a)(5) of this section will subsequently be filed as set forth in § 1310.06 within 15 days after the regulated person becomes aware of the circumstances of the event. Written reports of transactions listed in paragraph (a)(2) of this section shall be submitted to the DEA Divisional Office for the area in which the regulated person making the report is located within 5 days following the end of the calendar month in which the transaction took place. A transaction may not be completed with a person who description or identifying characteristic has previously been furnished to the regulated person by the Administration unless the transaction is approved by the Administration.

* * * * *

(d) Each regulated bulk manufacturer of a listed chemical shall submit manufacturing, inventory, transaction and use data on an annual basis as set forth in § 1310.06 (h). For purposes of this paragraph only, the term bulk manufacturer means a person who produces a listed chemical by means of chemical synthesis or by extraction from other substances. The term bulk manufacturer does not include persons whose sole activity consists of the repackaging or relabeling of listed chemical products or the manufacture of drug products containing listed chemicals. This data shall be submitted annually to the Drug and Chemical Evaluation Section, Drug Enforcement Administration (DEA), Washington DC 20537, on or before the 31st day of January of the year immediately following the period for which submitted. This reporting requirement does not apply to drug products which are exempted under 21 U.S.c. 802 (39)(A)(iv) except as set forth in § 1310.06 (h)(5). Each report shall be submitted on company letterhead and signed by an appropriate, responsible official.

7. Section 1310.06 is amended by revising paragraphs (a), introducing text, (a)(1), (c), and (d) and by adding a new paragraph (h) to read as follows:

§ 1310.06 Content of records and reports.

(a) Each record required by § 1310.03 shall include the following:

(1) The name, address, and, if required, DEA registration number of each party to the regulated transaction.

* * * * *

(c) Each report required by § 1310.05(a) shall include the information as specified by § 1310.06(a) and, where obtainable, the registration number of the other party, if such party is registered. A report submitted pursuant to § 1310.059a)(1) or (a)(4) must also include a description of the circumstances leading the regulated person to make the report, such as the reason that the method of payment was uncommon or the loss unusual. If the report is for a loss or disappearance under § 1310.05(a)(4), the circumstances of such loss must be provided (in-transit, theft from premise, etc.)

(d) A suggested format for the reports is provided below:

Supplier:
Registration Number _____
Name _____
Business Address _____
City _____
State _____
Zip _____
Business Phone _____

Purchaser:
Registration Number _____
Name _____
Business Address _____
City _____
State _____
Zip _____
Business Phone _____
Identification _____

Shipping Address (If different than purchaser Address):
Street _____
City _____
State _____
Zip _____
Date of Shipment _____
Name of Listed Chemical(s) _____
Quantity and Form of Packaging _____

Description of Machine:
Make _____
Model _____
Serial # _____
Method of Transfer _____

If Loss or Disappearance:
Date of Loss _____
Type of Loss _____
Description of Circumstances _____

* * * * *

(h) Each annual report required by § 1310.05 (d) shall provide the following information for each listed chemical manufactured:

(1) The name and address of the listed chemical manufacturer and person to contact for information.

(2) The name and total quantity of the listed chemical manufactured during the preceding calendar year.

(3) The year end inventory of the listed chemical as of the close of business on the 31st day of December of the preceding calendar year.

(4) The total quantity of listed chemical used for internal consumption during the preceding calender year and a written description of this use.

(5) The quantity of listed chemical manufactured which has been converted to a product exempted under § § 1310.01(f)(1)(iv) or 1310.01(f)(1)(v) and a written description of the exempt products produced.

(6) The total annual quantity of the listed chemical distributed during the preceding calendar year. This data shall include an itemization of foreign versus domestic distribution.

(7) If applicable, the total annual quantity of the listed chemical purchased during the preceding calendar year.

(8) Data shall identify the specific isomer, salt or ester when applicable but quantitative data shall be reported as annydrous base or acid in kilograms.

8. Section 1310.07 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1310.07 Proof of identity.

(a) Each regulated person who engages in a regulated transaction must identify the other party to the transaction. For domestic transaction, this shall be accomplished by having the other party present documents which would verify the identity, or registration status if a registrant, of the other party to the regulated person at the time the order is placed. For export transactions, this shall be accomplished by good faith inquiry through reasonably available research documents or publicly available information which would indicate the existence of the foreign customer. No proof of identity is required for foreign suppliers.

(b) The regulated person must verify the existence and apparent validity of a business entity ordering a listed chemical, tableting machine or encapsulating machine. For domestic transactions, this may be accomplished by such methods as checking the telephone directory, the local credit bureau, the local Chamber of Commerce or the local Better Business Bureau, or, it the business entity is a registrant, by verification of the registration. For export transactions, a good faith inquiry to verify the existence and apparent validity of a foreign business entity may be accomplished by such methods as verifying the business telephone listing through international telephone information, the firm's listing in international or foreign national chemical directories or other commerce directories of trade publications, confirmation through foreign subsidiaries of the U.S. regulated person, verification through the country of destination's embassy Commercial Attache, or official documents provided by the purchaser which confirm the existence and apparent validity of the business entity.

* * * * *

9. Section 1310.08 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(b) Exports, transshipments, and international transactions of hydrochloric and sulfuric acids, except for exports, transshipments and international transactions to the following countries.

* * * * *

10. Section 1310.10, 1310.11, 1310.12, 1310.13, 1310.14 and 1310.15 are proposed to be added to read as follows:

§ 1310.10 Removal of the exemption of drugs distributed under the Food, Drug and Cosmetic Act.

(a) The Administrator may remove from exemption under § 1310.01(f)(1)(iv) any drug or group of drugs that the Administrator finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance. In removing a drug or group of drugs from the exemption the Administrator shall consider:

(1) The scope, duration, and significance of the diversion;

(2) Whether the drug or group of drugs is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

(3) Whether the listed chemical can be readily recovered from the drug or group of drugs.

(b) Upon determining that a drug or group of drugs should be removed from the exemption under paragraph (a) of this section, the Administrator shall issue and publish in the **Federal Register** his proposal to remove the drug or group of drugs from exemption, which shall include a reference to the legal authority under which the proposal is based. The Administrator shall permit any interested person to file written comments on or objections to the proposal. After considering any comments or objections filed, the Administrator shall publish in the **Federal Register** his final order.

(c) The Administrator shall limit the removal of a drug or group of drugs from exemption under paragraph (a) of this section to the most identifiable type of the drug or group of drugs for which evidence of diversion exists unless there is evidence, based on the pattern of diversion and other relevant factors, that the diversion will not be limited to that particular drug or group of drugs.

(d) Any manufacturer seeking reinstatement of a particular drug product that has been removed from an exemption under paragraph (a) of this section, may apply to the Administrator for reinstatement of the exemption for that particular drug product on the grounds that the particular drug product is manufactured and distributed in a manner that prevents diversion. In determining whether the exemption should be reinstated the Administrator shall consider:

(1) The package sizes manner of packaging of the drug product;

(2) The manner of distribution and advertising of the drug product;

(3) Evidence of diversion of the drug product;

(4) Any actions taken by the manufacturer to prevent diversion of the drug product; and

(5) Such other factors as are relevant to and consistent with the public health and safety, including the factors described in paragraph (a) of this section as applied to the drug product.

(e) Within a reasonable period of time after receipt of the application for reinstatement of the exemption, The Administrator shall notify the applicant of his acceptance or non-acceptance of his application, and if not accepted, the reason therefor. If the application is accepted for filing, the Administrator shall issue and publish in the **Federal Register** his order on the reinstatement of the exemption for the particular drug product, which shall include a reference to the legal authority under which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order. If any such comments raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness

of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

(f) Unless the Administrator has evidence that the drug product is being diverted, as determined by applying the factors set forth in paragraph (a) of this section, and the Administrator so notifies the applicant, transactions involving a specific drug product will not be considered regulated transactions during the following periods:

(1) While a bonafide application for reinstatement of exemption under paragraph (d) of this section for the specific drug product is pending resolution, provided that the application for reinstatement is filed not later than 60 days after the publication of the final order removing the exemption; and

(2) For a period of 60 days following the Administrator's denial of an application for reinstatement.

(g) An order published by the Administrator in the **Federal Register** pursuant to paragraph (e) of this section to reinstate an exemption may be modified or revoked with respect to a particular drug product upon a finding that:

(1) Applying the factors set forth in paragraph (a) to the particular drug product, the drug product is being diverted; or

(2) There is a significant change in the data that led to the issuance of the final rule.

§ 1310.11 Reinstatement of exemption for drug products distributed under the Food, Drug and Cosmetic Act.

(a) The Administrator has reinstated the exemption for the drug products listed in paragraph (e) of this section from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822–823, 830, and 957–958 to the extent described in paragraphs (b), (c), and (d) of this section.

(b) Records and reports: All regulated persons who manufacture an exempted drug product must keep complete and accurate records and file all reports required under §§ 1310.05 and 1310.06 on all listed chemicals used in manufacturing the exempt drug product. Transactions involving reinstated exempt drug products contained in paragraph (e) of this section are not regulated transactions and thus records and reports are not required to be kept for listed chemicals once they become part of the reinstated exempt drug product.

(c) No reinstated exemption granted pursuant to 1310.10 affects the criminal liability for illegal possession or distribution of listed chemicals contained in the exempt drug product.

(d) Changes in exempt drug product compositions: Any change in the quantitative or qualitative composition, trade name or other designation of an exempt drug product listed in paragraph (e) of this section requires a new application for reinstatement of the exemption.

(e) The following drug products, in the form and quantity listed in the application submitted (indicated as the "date") are designated as reinstated exempt drug products for the purposes set forth in this section:

EXEMPT DRUG PRODUCTS

Supplier	Product name	Form	Date
[Reserved]			

§ 1310.12 Exemption of chemical mixtures; application.

(a) The Administrator may, by publication of a Final Rule in the **Federal Register**, exempt from the application of all or any part of the Act, a chemical mixture consisting of two or more chemical substances, at least one of which is not a List I or List II chemical, if:

(1) The mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

(2) The listed chemical or chemicals contained in the chemical mixture cannot be readily recovered.

(b) Any person seeking an exemption for a chemical mixture from the application of all or any part of the Act, pursuant to paragraph (a) of this section, may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(c) An application for exemption under this section shall contain the following information:

(1) The name, address, and registration number, if any, of the applicant;

(2) The date of the application;

(3) The name, address, and registration number, if any, of the manufacturer or importer of the chemical mixture, if not the applicant;

(4) The exact trade name(s) of the applicant's chemical mixture and, if the applicant formulates or manufactures the chemical mixture for other entities, the exact trade names of the chemical mixtures and the names of the entities for which the chemical mixtures were prepared;

(5) The complete qualitative and quantitative composition of the chemical mixture (including all listed and non-listed chemicals) and its intended use;

(6) The chemical and physical properties of the mixture and how they differ from the properties of the listed chemical or chemicals;

(7) A statement which the applicant believes is justification for granting an exemption for the chemical mixture. The statement must explain how the chemical mixture meets the exemption criteria set forth in paragraph (a) of this section.

(8) The identification of any information on the application which is considered by the applicant to be a trade secret or confidential and entitled to protection under U.S. laws restricting the public disclosure of such information.

(d) The Administrator may require the applicant to submit such additional documents or written statements of fact relevant to the application which he deems necessary for determining if the application should be granted.

(e) Within a reasonable period of time after the receipt of a completed application for an exemption under this section, the Administrator shall notify the applicant of acceptance or non-acceptance of the application. If the application is not accepted, an explanation will be provided. The Administrator is not required to accept an application if any information required pursuant to paragraph (c) of this section or requested pursuant to paragraph (d) of this section is lacking or not readily understood. The applicant may, however, amend the application to meet the requirements of paragraphs (c) and (d) of this section. If the application is accepted for filing, the Administrator shall issue and publish in the **Federal Register** an order on the application, which shall include a reference to the legal authority under which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order. If any comments or objections raise significant issues regarding any findings of fact or law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend the original order as deemed appropriate.

(f) The Administrator may at any time revoke or modify any exemption granted

pursuant to this section by following the procedures set forth in paragraph (e) of this section for handling an exemption application which has been accepted for filing.

§ 1310.13 Exempt chemical mixtures.

(a) The chemical mixtures listed in paragraph (e) of this section have been exempted by the Administrator from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822–3, 830, and 957–8 to the extent described in paragraphs (b), (c), and (d) of this section.

(b) Records and reports: All regulated persons who manufacture an exempt chemical mixture must keep complete and accurate records and file all reports required under §§ 1310.05 and 1310.06 on all listed chemicals used in manufacturing the exempt chemical mixture. Transactions involving approved exempt chemical mixtures contained in paragraph (e) of this section are not regulated transactions and thus records and reports are not required to be kept for listed chemicals once they become part of an exempt chemical mixture.

(c) No exemption granted pursuant to § 1310.12 affects the criminal liability for illegal possession or distribution of listed chemicals contained in the exempt chemical mixture.

(d) Changes in chemical mixture compositions: Any change in the quantitative or qualitative composition, trade name or other designation of an exempt chemical mixture listed in paragraph (e) of this section requires a new application for exemption.

(e) The following chemical mixtures, in the form and quantity listed in the application submitted (indicated as the "date") are designated as exempt chemical mixtures for the purposes set forth in this section:

EXEMPT CHEMICAL MIXTURES

Supplier	Product name	Form	Date
[Reserved]			

§ 1310.14 Exemption of drug products containing ephedrine and therapeutically significant quantities of another active medicinal ingredient.

(a) Any manufacturer of a drug product containing ephedrine in combination with another active medicinal ingredient, the product formulation of which is not listed in the compendiums set forth in § 1310.01(f)(1)(iv)(A), may request that the Administrator exempt the product as one which contains ephedrine together with a therapeutically significant quantity of another active medicinal ingredient.

(b) An application for an exemption under this section shall contain the following information:

(1) The name and address of the applicant;

(2) The exact trade name of the drug product for which exemption is sought;

(3) The complete quantitative and qualitative composition of the drug product;

(4) A brief statement of the facts which the applicant believes justify the granting of an exemption under this section; and

(5) Verification from the Food and Drug Administration that the product may be lawfully marketed or distributed under the Food, Drug, and Cosmetic Act.

(6) The identification of any information on the application which is considered by the applicant to be a trade secret or confidential and entitled to protection under U.S. laws restricting the public disclosure of such information by government employees.

(c) The administrator may require the applicant to submit such additional documents or written statements of fact relevant to the application which he deems necessary for determining if the application should be granted.

(d) Within a reasonable period of time after the receipt of a completed application for an exemption under this section, the Administrator shall notify the applicant of acceptance or nonacceptance of the application. If the application is not accepted, an explanation will be provided. The Administrator is not required to accept an application if any of the information required in paragraph (b) of this section or requested pursuant to paragraph (c) of this section is lacking or not readily understood. The applicant may, however, amend the application to meet the requirements of paragraphs (b) and (c) of this section. If the application is accepted for filing, the Administrator shall issue and publish in the Federal Register an order on the application, which shall include a reference to the legal authority under which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order. If any comments or objections raise significant issues regarding any findings of fact or law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend the original order as deemed appropriate.

§ 1310.15 Exempt drug products containing ephedrine and therapeutically significant quantities of another active medicinal ingredient.

(a) The drug products containing ephedrine and therapeutically significant quantities of another active medicinal ingredient listed in paragraph (e) of this section have been exempted by the Administrator from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822–3, 830, and 957–8) to the extent described in paragraphs (b), (c), and (d) of this section.

(b) Records and reports: All regulated persons who manufacture an exempt drug product must keep complete and accurate records and file all reports required under §§ 1310.05 and 1310.06 on all listed chemicals used in manufacturing the exempt drug product. Transactions involving approved exempt drug products contained in paragraph (e) of this section are not regulated transactions and thus records and reports are not required to be kept for listed chemicals once they become part of an exempt drug product.

(c) No exemption granted pursuant to § 1310.14 affects the criminal liability for illegal possession or distribution of listed chemicals contained in the exempt drug product.

(d) Changes in drug product compositions: Any change in the quantitative or qualitative composition of an exempt drug product listed in paragraph (e) of this section requires a new application for exemption.

(e) In addition to the drug products listed in the compendium set forth in § 1310.01(f)(1)(iv)(A), the following drug products, in the form and quantity listed in the application submitted (indicated as the "date") are designated as exempt drug products for the purposes set forth in this section:

EXEMPT DRUG PRODUCTS CONTAINING EPHEDRINE AND THERAPEUTICALLY SIGNIFICANT QUANTITIES OF ANOTHER ACTIVE MEDICINAL INGREDIENT

Supplier	Product name	Form	Date
[Reserved]			

IV. 21 CFR Part 1313 is proposed to be amended as follows:

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.02 is proposed to be amended by revising paragraphs (c), (d), (h) and (i); redesignating paragraph (m) as paragraph (o) and adding new paragraphs (m) and (n) to read as follows:

§ 1313.02 Definitions.

* * * * *

(c) The term *regulated person* means any individual, corporation, partnership, association, or other legal entity who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine, or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine.

(d) The term *regulated transaction* means:

(1) A distribution, receipt, sale, importation, exportation, or international transaction of a listed chemical, or if the Administrator establishes a threshold amount for a specific listed chemical, a threshold amount as determined by the Administrator, which includes a cumulative threshold amount for multiple transactions, of a listed chemical, except that such term does not include:

(i) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person;

(ii) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this part or parts 1309 and 1310 of this chapter;

(iii) Any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Administrator as excluded from this definition as unnecessary for enforcement of the Act;

(iv) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act unless—

(A) The drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient (for purposes of this paragraph, the term "therapeutically insignificant quantities" shall apply if the product formulation (i.e., the qualitative and quantitative composition of active ingredients within the product) is not listed in any of the following compendiums:

(*1*) *American Pharmaceutical Association (APhA) Handbook of Nonprescription Drugs;*

(*2*) *Drug Facts and Comparisons* (published by Wolters Kluwer Company); or

(*3*) *USP DI* (published by authority of the United States Pharmacopeial Convention, Inc.);

(*4*) Or the product is not listed in § 1310.15 as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in § 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph.

(B) The Administrator has determined that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(C) The quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Administrator; or

(v) Any transaction in a chemical mixture listed in § 1310.13 of this chapter.

* * * * *

(h) The term *regular importer* means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Administrator.

(i) The term *established record* as an importer means that the regulated person has imported a listed chemical at least once within the past six months, or twice within the past twelve months from a foreign supplier. The term also means that the regulated person has provided the Administration with the following information in accordance with the waiver of the 15-day advance notice requirements of § 1313.15:

(1) The name, DEA registration number (where applicable), street address, telephone number, telex number, and, where available, the facsimile number of the regulated person and of each foreign supplier; and

(2) The frequency and number of transaction occurring during the preceding 12 month period.

* * * * *

(m) The terms *broker* and *trader* means any individual, corporation, corporate division, partnership, association, or other legal entity which assists in arranging an international transaction in a listed chemical by—

(1) Negotiating contracts;

(2) Serving as an agent or intermediary; or

(3) Bringing together a buyer and seller, a buyer and transporter, or a seller and transporter.

(n) The term *international transaction* means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trade located in the United States participates.

* * * * *

3. Section 1313.12 is proposed to be amended by revising paragraph (c) and adding new paragraphs (d), (e) and (f) to read as follows:

§ 1313.12 Requirement of authorization to import.

* * * * *

(c) The 15-day advance notification requirement for listed chemical imports may be waived for:

(1) Any regulated person who has satisfied the requirement for reporting to the Administration as a regular importer of such listed chemicals.

(2) A specific listed chemical, as set forth in paragraph (f) of the section, for which the Administrator determines that advance notification is not necessary for effective chemical diversion control.

(d) For imports where advance notification is waived pursuant to paragraph (c)(1) of this section, the DEA Form 486 must be received by the Drug Enforcement Administration, Chemical Operations Section, on or before the date of importation through use of the mailing address listed in § 1313.12(b) or through use of electronic facsimile media.

(e) For importations where advance notification is waived pursuant to paragraph (c)(2) of this section no DEA Form 486 is required, however, the regulated person shall file quarterly reports to the Drug Enforcement

Administration, Chemical Operations Section, P.O. Box 28346, Washington, DC 20038, by no later than the 15th day of the month following the end of each quarter. The report shall contain the following information regarding each individual importation:

(1) The name of the listed chemical;

(2) The quantity and date imported;

(3) The name and full business address of the supplier;

(4) The foreign port of embarkation; and

(5) The port of entry.

(f) The 15 day advance notification requirement set forth in paragraph (a) of this section has been waived for imports of the following listed chemicals:

(1)–(2) [Reserved]

4. Section 1313.15 is proposed to be revised to read as follows:

1313.15 Waiver of 15-day advance notice for regular importers.

(a) Each regulated person seeking designation as a "regular importer" shall provide, by certified mail return receipt requested, to the Administration such information as is required under § 1313.02(i), documenting their status as a regular importer.

(b) Each regulated person making application under paragraph (a) of this section shall be considered a "regular importer" for purposes of waiving the 15-days advance notice, 30 days after receipt of the application by the Administration, as indicated on the return receipt, unless the regulated person is otherwise notified in writing by the Administration.

(c) The Administrator may, at any time, disqualify a regulated person's status as a regular importer on the grounds that the chemical being imported may be diverted to the clandestine manufacture of the chemical substance.

(d) Unless the Administration notifies the chemical importer to the contrary, the qualification of a regular importer of any one of these three chemicals, acetone, 2-Butanone (MEK), or toluene, qualifies that importer as a regular importer of all three of these chemicals.

(e) All chemical importer shall be required to file a DEA Form 486 as required by § 1313.12.

5. Section 1313.21 is proposed to be amended by revising paragraph (c), revising the text of and redesignating paragraph (d) as paragraph (g) and adding new paragraphs (d), (e), (f) to read as follows:

§ 1313.21 Requirement of authorization to export.

* * * * *

(c) The 15-day advance notification requirement for listed chemical exports may be waived for:

(1) any regulated person who has satisfied the requirements of § 1313.24 for reporting to the Administration an established business relationship with a foreign customer as defined in § 1313.02(j).

(2) A specific listed chemical to a specified country, as set forth in paragraph (f) of this section, for which the Administrator determines that advance notification is not necessary for effective chemical diversion control.

(d) For exports where advance notification is waived pursuant to paragraph (c)(1) of this section, the DEA Form 486 must be received by the Drug Enforcement Administration, Chemical Operations Section, on or before the date of exportation through use of the mailing address listed in § 1313.12(b) or through use of electronic facsimile media.

(e) For exportations where advance notification is waived pursuant to paragraph (c)(2) of this section, the regulated person shall file quarterly reports to the Drug Enforcement Administration, Chemical Operations Section, PO Box 28346, Washington, DC 20038, by no later than the 15th day of the month following the end of the each quarter. The report shall contain the following information regarding each individual importation:

(1) The name of the listed chemical;

(2) The quantity and date exported;

(3) The name and full business address of the foreign customer;

(4) The port of embarkation; and

(5) The foreign port of entry.

(f) The 15 day advance notification requirement set forth in paragraph (a) of this section has been waived for exports of the following listed chemicals to the following countries:

Name of Chemical	Country
[Reserved]	

(g) No person shall export or cause to be exported any listed chemical, knowing or having reasonable cause to believe the export is in violation of the laws of the country to which the chemical is exported or the chemical will be used to manufacture a controlled substance in violation of the Act or the laws of the country to which the chemical is exported. The Administration will publish a notice of foreign import restrictions for listed chemicals of which DEA has knowledge as provided in § 1313.25.

6. A new undesignated center heading and new §§ 1313.32, 1313.33 and 1313.34 are proposed to be added to read as follows:

Transshipments, In-Transit Shipments, and International Transactions Involving Listed Chemicals

1313.32 Requirement of Authorization for international transactions.

1313.33 Contents of an international transaction declaration.

1313.34 Distribution of the international transaction declaration.

Transshipments, In-Transit Shipments, and International Transactions Involving Listed Chemicals

§ 1313.32 Requirement of authorization for international transactions.

(a) A broker or trader shall notify the Administrator prior to an international transaction involving a listed chemical which meets or exceeds the threshold amount identified in § 1310.04 of this chapter, in which the broker or trader participates. Notification must be made no later than 15 days before the transaction is to take place. In order to facilitate an international transaction involving listed chemicals and implement the purpose of the Act, regulated persons may wish to provide advance notification to the Administration as far in advance of the 15 days as possible.

(b) A completed DEA Form 486 must be received at the following address not later than 15 days prior to the international transaction:

Drug Enforcement Administration, PO Box 28346, Washington, DC 20038.

A copy of the DEA Form 486 may be transmitted directly to the Drug Enforcement Administration, Chemical Operations Section, through electronic facsimile media not later than 15 days prior to the exportation.

(c) No person shall serve as a broker or trader for an international transaction involving a listed chemical knowing or having reasonable cause to believe that the transaction is in violation of the laws of the country to which the chemical is exported or the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported. The Administration will publish a notice of foreign import restrictions for listed chemicals of which DEA has knowledge as provided in § 1313.25.

§ 1313.33 Contents of an international transaction declaration.

(a) An international transaction involving a chemical listed in § 1310.02 of this chapter which meets the threshold criteria established in § 1310.04 of this chapter may be arranged by a broker or trader if the

chemical is needed for medical, commercial, scientific, or other legitimate uses.

(b) Any broker or trader who desires to arrange an international transaction involving a listed chemical which meets the criteria set forth in § 1310.04 of this chapter shall notify the Administration through the procedures outlined in § 1313.32(b).

(c) The DEA Form 486 must be executed in triplicate and must include all the following information:

(1) The name, address, telephone number, telex number, and, where available, the facsimile number of the chemical exporter; the name, address, telephone number, telex number, and, where available, the facsimile number of the chemical importer;

(2) The name and description of each listed chemical as it appears on the label or container, the name of each listed chemical as it is designated in § 1310.02 of this chapter, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof, and the gross weight of the shipment given in kilograms or parts thereof;

(3) The proposed export date, the port of exportation, and the port of importation; and

(4) The name, address, telephone, telex, and where available, the facsimile number, of the consignee in the country where the chemical shipment is destined; the name(s) and address(es) of any intermediate consignee(s).

§ 1313.34 Distribution of the international transaction declaration.

The required three copies of the DEA Form 486 will be distributed as follows:

(a) Copies 1 and 3 shall be retained on file by the broker or trader as the official record of the international transaction. Declaration forms involving List I chemicals shall be retained for four years; declaration forms for List II chemicals shall be retained for two years.

(b) Copy 2 is the Drug Enforcement Administration copy used to fulfill the notification requirements of § 1313.32.

8. In addition to the amendments set forth above, DEA proposes in 21 CFR part 1313 to remove the words "Precursors and Essential Chemicals" and "Precursor and Essential Chemical" and add, in their place, the words "listed Chemicals" in the following places:

(a) The table of contents of part 1313;

(b) Section 1313.01;

(c) The center heading after Section 1313.02;

(d) Section 1313.14;

(e) The center heading after Section 1313.15;

(f) Section 1313.23.

8. In §§ 1313.13(a) and 1313.22(a) DEA proposes to remove the words "precursor or essential chemical" and add, in their place, the words "List I or List II chemical".

9. In §§ 1313.14(a) and 1313.23(a) DEA proposes to remove the words "listed precursor chemical" and "listed essential chemical" and add, in their place, the words "List I chemical" and "List II chemical" respectively.

V. 21 CFR part 1316 is proposed to be amended as follows:

PART 1316—[AMENDED]

1. The authority citation for part 1316, Subpart A is proposed to be revised to read as follows:

Authority: 21 U.S.C. 822(f), 830(a), 871(b), 880, 958(f), 965.

2. Section 1316.02 is proposed to be amended by revising paragraph (c)(2) to read as follows:

§ 1316.02 Definitions.

* * * * *

(c) * * *

(2) Places, including factories, warehouses, or other establishments and conveyances, where persons registered under the Act or exempted from registration under the Act, or regulated persons may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of controlled substances or listed chemicals or where records relating to those activities are maintained.

* * * * *

3. Section 1316.03 is proposed to be amended by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 1316.03 Authority to make inspections.

* * * * *

(b) Inspecting within reasonable limits and to a reasonable manner all pertinent equipment, finished and unfinished controlled substances, listed chemicals, and other substances or materials, containers, and labeling found at the controlled premises relating to this Act;

(c) Making a physical inventory of all controlled substances and listed chemicals on-hand at the premises;

(d) Collecting samples of controlled substances or listed chemicals (in the event any samples are collected during an inspection, the inspector shall issue a receipt for such samples on DEA Form 84 to the owner, operator, or agent in charge of the premises);

(e) Checking of records and information on distribution of controlled substances or listed chemicals by the registrant or regulated person as they relate to total distribution of the registrant or regulated person (i.e., has the distribution of controlled substances or listed chemicals increased markedly within the past year, and if so why);

* * * * *

4. Section 1316.09 is proposed to be amended by revising paragraph (a)(3) to read as follows:

§ 1316.09 Application for administrative inspection warrant.

(a) * * *

(3) A statement relating to the nature and extent of the administrative inspection, including, where necessary, a request to seize specified items and/or to collect samples or finished or unfinished controlled substances or listed chemicals;

* * * * * *

Dated: August 30, 1994.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 94–25071 Filed 10–12–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Indian Arts and Crafts Board

25 CFR PART 309

RIN 1090–AA45

Protection for Products of Indian Art and Craftsmanship

AGENCY: Indian Arts and Crafts Board (IACB), DOI.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rule will establish regulations to implement Pub. L. 101–644, the Indian Arts and Crafts Act of 1990. The proposed regulations define the nature and Indian origin of products embraced by the law and specify procedures for carrying out the law. The trademark provisions of the Act are not included in this proposed rulemaking, and will be treated at a later time.

DATES: Written comments must be received on or before February 10, 1995.

ADDRESSES: Comments on the proposal should be marked "Docket No. 1090–AA45" and mailed or delivered in duplicate to: Indian Arts and Crafts Board, Room 4004–MIB, 1849 C Street, NW., Washington, DC 20240. Commenters who want the Indian Arts and Crafts Board to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which

the following statement is made: "Comments to Docket to Docket No. 1090–AA45." The postcard will be date stamped and returned to the commenter.

Comments may be inspected at room 4004, 1849 C Street, NW., Washington, DC, on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Meridith Z. Stanton or Geoffrey E. Stamm, Indian Arts and Crafts Board, Room 4004–MIB, 1849 C Street, NW., Washington, DC 20240, telephone 202–208–3773 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The Indian Arts and Crafts Board was established by the Act of August 27, 1935 (49 Stat. 891; 25 U.S.C. 305a), and is responsible for promoting the development of American Indian and Alaska Native arts and crafts, improving the economic status of members of Federally recognized tribes, and establishing and expanding marketing opportunities for arts and crafts produced by American Indians and Alaska Natives.

The 1935 Act established criminal penalties for selling goods with misrepresentations that they were Indian-produced. These original provisions, in section 1159 of title 18, United States Code, provided for fines not to exceed $500 or imprisonment not to exceed six months or both. Although this law was in effect for many years, it provided no meaningful deterrent to those who misrepresent imitation Indian arts and crafts. In addition, it required "willfulness" and "intent" to prove a violation, and very little enforcement took place.

In recent years, the Congress notes that the Indian arts and crafts market, with several hundred million dollars in annual sales, was expanding and experiencing a greater frequency of fraudulent sales. The Congress requested a special report from the Department of Commerce, which in 1985 determined that significant losses were incurred by the domestic Indian arts and crafts market due to unmarked imported imitations. As a result, the Congress included in the 1988 Omnibus Trade Bill, Pub. L. 100–418, a direction to the Customs Service to address the issue of misrepresentation. This led to the promulgation of regulations to require permanent country-of-origin marking on imported Indian-style jewelry and other arts and crafts products. Thereafter, the Congress shifted its attention to problems originating in the domestic market and passed Pub. L. 101–644, the Indian Arts and Crafts Act of 1990.

The Indian Arts and Crafts Act of 1990 is essentially a truth-in-advertising law designed to prevent products from being marketed as "Indian made," when the products are not, in fact, made by Indians as defined in the Act. Because of the truth-in-advertising nature of the Act, the drafters of the proposed regulations have tried not to restrict truthful statements that might be made in marketing a product.

In respect of tribal sovereignty, the drafters do not require uniform criteria or procedures or documentation forms for tribal certification of individuals as Indian artisans, although such uniformity would be a great convenience to businesses and consumers in the market.

Section-by-Section Analysis

Section 309.1

This section outlines the purpose of the regulations.

Section 309.2

This section defines terms used throughout the regulations.

The definition of "Indian product" is central to these regulations. It explicitly includes handcrafts because the core of the market consists of such products, and the term "handcraft" carries substantial economic value when attached to a product. It excludes products made before 1935 because, in passing the Indian Arts and Crafts Act of 1990, the Congress was concerned with fraudulent sales in the contemporary market. The Indian Arts and Crafts Board's mission as an agency is to promote the development of the contemporary market. The 1935 cutoff date was chosen because that was the founding year of the Indian Arts and Crafts Board, and the Act is an amendment to the Board's organic act.

Definitions of "Indian," "Indian arts and crafts organization," and "Indian tribe" are provided in the statute. A current list of Federally-recognized Indian tribes was published in the **Federal Register** on October 21, 1993 (58 FR 54364), by the Bureau of Indian Affairs, U.S. Department of the Interior. The Department of the Interior does not maintain a list of state recognized tribes that qualify under subsection (b)(2).

Section 309.3

Subsection (a) of this section is particularly important because it states how the unmodified use of the word "Indian" or the unmodified name of an Indian tribe will be construed by the Indian Arts and Crafts Board as a representation of an Indian product for enforcement purposes.

The Act specifically addresses the situation of people of various degrees of Indian ancestry who are active in the art market, but are not members of tribes for whatever reason. The Congress provided in the Act that tribes could decide to certify such people as Indian artisans. There may be instances in which a person is not a member of a tribe and has not been certified as an Indian artisan, but nonetheless is of Indian ancestry. A different identification issue arises among people who make products that may appear Indian-made, or may be intentionally styled after Indian products, but who have no intention of misrepresenting them as Indian-made.

The regulations need to identify a reasonable boundary between marketing statements that are simply truthful, and should be permitted, and statements that are clearly misleading, and should be prohibited. Comments are especially encouraged about what is reasonable and how best to establish a boundary. As proposed, the regulations provide that the unmodified use of the word "Indian" or of the name of a tribe in connection with a product would necessarily be misleading if the maker was not a member or certified artisan of a tribe.

Foreign products have been a major concern of the Congress, and the fundamental purpose of the Act is to protect Indians, as defined, who are resident in the United States. Subsection (b) clarifies how certain marketing conduct related to products of Indians of foreign tribes will be construed by the Indian Arts and Crafts Board for enforcement purposes.

Section 309.4

This section states the statutory prohibition against a tribe imposing a fee for certifying an Indian artisan.

Section 309.5

This section states where the statutory criminal and civil penalties for violations may be found.

Section 309.6

This section provides the address where complaints about alleged violations of the Act may be submitted.

Public Participation

Any person may obtain a copy of this NPRM by mailing a request to the Indian Arts and Crafts Board, Room 4004–MIB, 1849 C Street, NW., Washington, DC 20240, or by calling 202–208–3773 (not a toll-free call).

Interested persons are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments relating to the effects that might result from the adoption of the proposals contained in this notice are invited. Communications should identify the docket number and be submitted in duplicate to the address listed above. Commenters who want the Indian Arts and Crafts Board to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 1090–AA45." The postcard will be date stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered by the Commissioners of the Indian Arts and Crafts Board before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rule docket both before and after the closing date for comments.

Drafting Information

These proposed regulations were prepared by Geoffrey E. Stamm (Acting General Manager, Indian Arts and Crafts Board) and Meridith Z. Stanton (Advisory Services Specialist, Indian Arts and Crafts Board).

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under E.O. 12866.

There is no collection of information in this rule requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An unknown number of individuals, small businesses, and tribal governments may be affected in some way, but they do not exceed several thousand in aggregate. These possible effects, such as increased demand on tribal governments from some of their members to document their status, stem from the statute itself rather than the proposed regulations, as the preponderance of the proposed regulations does not exceed the non-discretionary statutory requirements.

The Department of the Interior has determined that these proposed regulations will not have a significant effect on the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). In addition, the Department of the Interior has determined that these proposed regulations are categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 25 CFR Part 309

Indians-Arts and crafts.

For the reasons set out in the preamble, 25 CFR Chapter II is proposed to be amended as follows:

Part 309 is added to read as follows:

PART 309—PROTECTION FOR PRODUCTS OF INDIAN ART AND CRAFTSMANSHIP

Sec.

Authority: 18 U.S.C. 1159, 25 U.S.C. 305

§ 309.1 Purpose.

These regulations define the nature and Indian origin of products protected by the Indian Arts and Crafts Act of 1990 (18 U.S.C. 1159, 25 U.S.C. 305e) from false representations, and specify how the Indian Arts and Crafts Board will interpret certain conduct for enforcement purposes. The Act makes it unlawful to offer or display for sale or sell any good in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian Tribe or Indian arts and crafts organization resident within the United States.

§ 309.2 Definitions.

(a) *Indian* means any individual who is a member of an Indian tribe or is certified as an Indian artisan by an Indian tribe.

(b) *Indian artisan* means an individual who is certified as such by an Indian tribe.

(c) *Indian arts and crafts organization* means any legally established arts and crafts marketing organization composed of members of Indian tribes.

(d) *Indian product* means any art or craft product made by an Indian, other than a product made before 1935.

(1) This includes, but is not limited to:

(i) Products that are in a traditional Indian style or traditional Indian medium;

(ii) Products that are in a non-traditional Indian style or non-traditional Indian medium;

(iii) Handcrafts, i.e. objects created with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.

(2) This does not include industrial products.

(e) *Indian tribe* means—

(1) Any Indian tribe, band, nation, Alaska Native village, or any organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Any Indian group that has been formally recognized as an Indian tribe by a state legislature or by a state commission or similar organization legislatively vested with state tribal recognition authority.

(f) *Product of a particular Indian tribe or Indian arts and crafts organization* means that the source of an Indian product is identified as a named Indian tribe or named Indian arts and crafts organization.

§ 309.3 Enforcement.

(a) *Indian products.* The unmodified word "Indian" or an unmodified name of an Indian tribe, used in connection with an art or craft product, is interpreted to mean—

(1) That the maker is a member of an Indian tribe, or of the particular Indian tribe named; and

(2) That the tribe is resident in the United States; and

(3) That the art or craft product is an Indian product; unless

(4) The name of the foreign country of tribal ancestry is also used with the product.

§ 309.4 Certification of Indian artisans.

As provided in section 305e, title 25, United States Code, a tribe may not impose a fee for certifying an Indian artisan.

§ 309.5 Penalties.

(a) *Criminal.* A person is subject to the penalties specified in section 1159, title 18, United States Code.

(b) *Civil.* A person is subject to the penalties specified in section 305e, title 25, United States Code.

§ 309.6 Complaints.

Complaints about protected products alleged to be offered or displayed for sale or sold in a manner that falsely suggests they are Indian should be made in writing and addressed to the General Manager, Indian Arts and Crafts Board, Room 4004–MIB, 1849 C Street NW., Washington, DC 20240.

Dated: October 5, 1994.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 94–25357 Filed 10–12–94; 8:45 am]

BILLING CODE 4310–RK–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

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

ACTION: Withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to the Kansas Revegetation Success Guidelines. Kansas is withdrawing this amendment because it needs more time to research the issues and plans to resubmit a formal amendment at a later date.

EFFECTIVE DATE: This withdrawal is effective October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION: By letter dated September 4, 1992 (Administrative Record No. KS–533), Kansas submitted a proposed amendment to its program pursuant to SMCRA. The amendment proposed to revise the Kansas Revegetation Success Guidelines. Kansas submitted the proposed amendment at the State's own initiative to improve its program.

On October 29, 1992 (Administrative Record No. KS–541), OSM announced receipt of and solicited public comment on the program amendment (57 FR 49051). On March 24, 1993 (Administrative Record No. KS–552), OSM notified Kansas of concerns it had with the proposed program amendment. On April 15, 1993 (Administrative Record No. KS–557), a public meeting was held between OSM and the State of Kansas in Pittsburg, Kansas. On April 23, 1993 (Administrative Record No. KS–553), Kansas requested an additional 30-day extension in order to respond to the issue letter from OSM. On May 24, 1993 (Administrative Record No. KS–556), Kansas requested an additional 30-day extension in order to respond to the issue letter from OSM. On June 24, 1993 (Administrative Record No. KS–559), Kansas responded to OSM's concerns. On July 12, 1993 (Administrative Record No. KS–562), OSM reopened the public comment period on the amendment for 30 days (58 FR 37447). On April 29, 1994 (Administrative Record No. KS–582), OSM notified Kansas of concerns it had with the revised program amendment. On May 5, 1994 (Administrative Record No. KS–583), Kansas requested an extension to the time required to respond to these concerns and a public meeting to discuss the issues; and on June 20, 1994 (Administrative Record No. KS–586), Kansas requested an extension on the time to respond until September 30, 1994. On July 20, 1994 (Administrative Record No. KS–588), a public meeting was held between OSM and the State of Kansas in Pittsburg, Kansas. On September 9, 1994 (Administrative Record No. KS–590), Kansas requested a 90-day extension in order to respond to the issue letter from OSM. On September 28, 1994 (Administrative Record No. KS–591), Kansas requested that the proposed amendment be withdrawn. Kansas proposes to research the remaining issues prior to resubmitting the amendment for formal approval at a later date.

Therefore, the proposed amendment announced in the October 29, 1992, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining

Dated: October 6, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–25296 Filed 10–12–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Proposed rule.

SUMMARY: The Defense Logistics Agency proposes to exempt a system of records from certain provisions of the Privacy Act. The system of records is identified as S100.10 GC, entitled Whistleblower Complaint and Investigation Files.

The exemption is intended to increase the value of the system of records for law enforcement purposes; to comply with prohibitions against the disclosure of certain kinds of information; and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received no later than December 12, 1994, to be considered by the agency.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Division, Programs and Analyses Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: *Executive Order 12866.* The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action.' Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the right and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980 The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense, certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

This proposed rule would add an exempt Privacy Act system of records to the DLA inventory of systems of records. DLA performs as one of its

principal functions investigations into whistleblower complaints arising from DLA employees and the employees of DLA contractors. The proposal to exempt the system reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The authority for the exemption may be found in 5 U.S.C 552a(k)(2). The system would thus be exempt from sections 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f). The Director proposes to adopt these exemptions.

List of Subjects in 32 CFR Part 323

Privacy.

Accordingly, the Defense Logistics Agency proposes to amend 32 CFR part 323 as follows:

1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. 32 CFR part 323, Appendix H is amended by adding paragraph d.

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Appendix H to Part 323 - DLA Exemption Rules

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d. ID: S100.10 GC (Specific exemption).

1. *System name:* Whistleblower Complaint and Investigation Files.

2. *Exemption:* Portions of this system of records may be exempt under the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

3. **Authority:** 5 U.S.C. 552a(k)(2).

4. *Reasons:* From subsection (c)(3) because granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

From subsection (e)(1), because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

From subsections (e)(4)(G) and (e)(4)(H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system. However, DLA will continue to publish such a notice in broad generic terms as is its current practice.

From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: October 6, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–25347 Filed 10–12–94; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH59–1–6376b; FRL–5077–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is approving, through direct final procedure, an Ohio State Implementation Plan (SIP) revision request for the purpose of implementing an emissions statement program for stationary sources within the State's marginal and above ozone nonattainment areas. Section 182(a)(3)(B) of title I of the Clean Air Act, as amended in 1990 (CAA), requires States with areas designated nonattainment for the ozone National Ambient Air Quality Standard (NAAQS) to establish regulations for annual reporting of actual emissions by sources that emit VOC or NOx in the nonattainment area. These emissions reports are referred to as "emissions statements." Sources in the following counties are subject to the emissions statement program requirements: Ashtabula, Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Lake, Licking, Lorain Lucas, Mahoning, Medina, Miami, Montgomery, Portage, Stark, Summit, Trumbull, Warren, and Wood.

In the final rules section of this **Federal Register**, the USEPA is approving this SIP revision request as a direct final rule without prior proposal because USEPA views the action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse public comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by October 28, 1994.

ADDRESSES: Written comments should be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604.

Copies of the State submittal for this action are available for public inspection during normal business hours at the following location (it is recommended that you contact Gina Smith at (312) 886–7018 before visiting the Region 5 office):

United States Environmental Protection Agency, Region 5, Air Enforcement Branch, Air and Radiation

Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Gina Smith, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–7018.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 13, 1994.

David Kee,

Acting Regional Administrator

[FR Doc. 94–25271 Filed 10–12–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 63

[AD–FRL–5087–4]

RIN 2060–AE05

National Emission Standards for Hazardous Air Pollutants for Source Category: Off-Site Waste and Recovery Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: Under the authority of the Clean Air Act, the EPA is proposing National Emission Standards for Hazardous Air Pollutants (NESHAP) for off-site waste and recovery operations. This rule would apply to owners and operators of facilities, with certain exceptions, that manage wastes or recoverable materials which have been generated off-site at another facility and contain specific organic chemical compounds listed as hazardous air pollutants (HAP). The NESHAP would require air emission controls be implemented for tanks, containers, surface impoundments, land disposal units, and certain other operations used to manage, convey, or handle wastes or recoverable materials except when the HAP content of a waste or recoverable material meets conditions specified in the rule.

DATES: Comments. The EPA will accept comments on the proposed rule until December 12, 1994.

Public Hearing. If requested, the EPA will hold a public hearing concerning the proposed rule beginning at 10 a.m. on November 21, 1994. Persons interested in presenting oral testimony to the EPA at a public hearing must contact the person listed below (see **FOR FURTHER INFORMATION CONTACT**) no later than November 10, 1994. Persons interested in attending the hearing should call the person listed below (see **FOR FURTHER INFORMATION CONTACT**) to verify that a hearing will be held.

ADDRESSES: Comments. Interested parties may submit written comments regarding the proposed rule (in duplicate, if possible) to the following: Air and Radiation Docket and Information Center, Attention Docket No. A–92–16, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a hearing is requested it will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina.

Background Information Document. The background information document (BID) may be obtained from the U.S. Environmental Protection Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "National Emissions Standards for Hazardous Air Pollutants for Source Category: Off-site Waste and Recovery Operations—Background Information Document for Proposed Standards," EPA document no. EPA–453/R–94–070a.

Docket. The proposed regulatory text, Background Information Document (BID), and other supporting information used in developing the proposed rule are available in the docket for public inspection and copying. The docket for this rulemaking is Docket No. A–92–16 and is located at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. The docket room is open to the public from 8 a.m. to 4 p.m., Monday through Friday. Telephone number (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Eric L. Crump, Office of Air Quality Planning and Standards, Chemicals and Petroleum Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. 27711, telephone (919) 541–5032, telefax (919) 541–3470.

SUPPLEMENTARY INFORMATION:

Organization of This Document

The information presented in this notice of proposed rule is organized as follows:

Additional Detailed Information

The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A–92–16 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). This notice, the proposed regulatory text, and the BID are also available on the Technology Transfer Network (TTN), one of the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bauds per second modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

A limited number of copies of these documents are available on diskette.

They can be obtained by writing or faxing a request to the EPA contact person designated earlier in this notice.

I. Summary of Proposed Rule

A. Summary of Rule Requirements

Today's proposed rule would amend title 40, chapter I, part 63 of the Code of Federal Regulations by adding a new subpart DD—National Emission Standards for Hazardous Air Pollutants for Off-site Waste and Recovery Operations. The following is a summary of the requirements proposed for the rule.

The EPA is proposing to define "waste" for the off-site waste and recovery operations NESHAP as any material generated from industrial, commercial, mining, or agricultural operations or from community activities that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded or discharged. This definition would include all materials defined to be solid wastes under Resource Conservation and Recovery Act (RCRA) rules including hazardous wastes. The EPA is proposing to define "recoverable material" for this rulemaking as any material generated from industrial, commercial, mining, or agricultural operations or from community activities that is recycled, reprocessed, reused, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being recycled, reprocessed, or reused. Under this definition, secondary materials such as used, surplus, and scrap materials that are recycled or reprocessed to recover reusable materials or to create new products would be considered by the EPA to be recoverable materials subject to this NESHAP. Waste and recoverable material subject to the off-site waste and recovery operations NESHAP are collectively referred to in the proposed rule as "regulated material."

1. Applicability

The proposed rule would apply to owners and operators of facilities, with certain exceptions listed below, where operations are conducted to manage, convey, or handle wastes or recoverable materials that are received from other facilities and contain hazardous air pollutants. In other words, the waste or recoverable material has been generated off-site at a separate location and, then, shipped or transferred to the facility for subsequent management. Applicable operations subject to the rule would include storage, treatment, and disposal operations as well as recycling, recovery, and reprocessing operations. All of these operations collectively are referred to hereafter in this notice as "off-site waste and recovery operations."

The rule would apply to off-site waste and recovery operations receiving regulated materials that contain one or more of the specific organic chemicals listed in a table included as part of the proposed rule. These organic chemicals have been designated as hazardous air pollutants (HAP) under CAA section 112(b), and are referred to collectively hereafter in this notice as "organic HAP." Off-site waste and recovery operations managing waste or recoverable material that does not contain any of the organic chemicals listed in the rule would not be "regulated materials" subject to the rule.

The EPA is proposing that the off-site waste and recovery operations NESHAP only apply to "major sources" as defined in the Part 63 general provisions (40 CFR 63.2). "Area sources" as defined under 40 CFR 63.2 would not be subject to the rule.

The rule would not apply to certain types of waste or recovery operations located at an affected facility because HAP emissions from these operations are addressed by other EPA regulatory actions. The following operations at an affected facility would be exempted from the requirements of the off-site waste and recovery operations NESHAP: (1) Units or equipment used exclusively to manage waste or recoverable material generated at the affected facility site (i.e., waste or recoverable material generated on-site); (2) municipal solid waste landfill units; (3) incinerators used to burn waste; (4) boilers or furnaces used to burn regulated material to produce energy; (5) units or equipment located at a publicly-owned treatment works; or (6) units or equipment used exclusively to manage waste that has been received from remediation activities to cleanup wastes designated as hazardous wastes under Resource, Conservation, and Recovery Act (RCRA) rules. In addition, the off-site waste and recovery operations NESHAP would not apply to underground components of injection wells used for disposal of waste.

2. General Standards

The general standards proposed for the off-site waste and recovery operations NESHAP apply to major sources. The standards would require that the owner or operator of an affected facility control air emissions from certain waste management units and equipment in which regulated materials containing the organic HAP listed in the rule are placed on or after the effective date of the rule. These air emission control requirements would not apply to any affected facility for which the owner or operator demonstrates that the total annual organic HAP mass content of all regulated materials subject to the rule entering the facility is less than 1 megagram per year (Mg/yr). The procedure to be used by the owner or operator to calculate the total annual organic HAP mass content of the regulated material is specified in the rule. The EPA requests comment on the proposed 1 Mg/yr exemption, and requests supporting information be provided with any recommendation for an alternative exemption level.

Two other provisions are proposed for the off-site waste and recovery operations NESHAP that would allow individual units at an affected facility to be exempted from the air emission control requirements of the rule. The first provision would exempt from the air emission control requirements those units at major sources that exclusively are used to manage regulated material received at the facility with a volatile organic hazardous air pollutant (VOHAP) concentration less than 100 parts per million by weight (ppmw) on a mass-weighted average basis. The regulated material VOHAP concentration would be determined based on the organic HAP content of the regulated material at the point where the facility accepts delivery or takes possession of the regulated material, using procedures specified in the rule. The EPA requests comment on the definitiveness of the term "point of entry" as defined in the rule.

The second individual unit exemption provision proposed in the rule would allow an owner or operator to selectively designate, on a site-specific basis, certain individual units to be exempt from the air emission control requirements regardless of the VOHAP concentration of the regulated material placed in the unit. Application of this discretionary exemption by the owner or operator would be limited based on regulated material organic HAP content. Under this provision, the total annual organic HAP mass content in the regulated materials placed in all of the units designated by the owner or operator as exempt units could not exceed 1 Mg/yr as determined in accordance with the procedures specified in the rule. The EPA requests comment on the structure of the proposed 1 Mg/yr exemption for individual units, as well as supporting information for any recommendation for an alternative exemption level.

For tanks, surface impoundments, containers, conveyance systems, and certain treatment units required to use air emission controls under the off-site waste and recovery operations NESHAP, the owner or operator would be required to either: (1) Install and operate air emission controls on the unit in accordance with standards specified in the rule; or (2) treat the regulated material before the regulated material is placed in the unit to remove or destroy organic HAP in accordance with requirements specified in the rule. For land disposal units and other miscellaneous units subject to the air emission control requirements of the rule, the owner or operator would be required to treat the regulated material before the regulated material is placed in the unit to remove or destroy organic HAP in accordance with the requirements specified in the rule. In addition to these requirements, the rule would require that the owner or operator of an affected facility control organic HAP emissions from leaks in certain ancillary equipment (e.g., pumps, valves, flanges, etc.) used to handle regulated material streams having a total organic HAP concentration equal to or greater than 10 percent by weight.

Under the proposed rule, an owner or operator would be allowed to use any type of treatment process to reduce the organic HAP content of the regulated material that can continuously achieve the performance requirements specified in the rule. Several alternative treatment process performance standards are specified in the proposed rule from which the owner or operator could choose to comply. These standards would allow the use of a treatment process that achieves any of the following conditions: (1) the actual VOHAP concentration of the regulated material exiting the treatment process is less than 100 ppmw or the VOHAP concentration limit established for the process, whichever value is lower; (2) the HAP reduction efficiency for the treatment process is equal to or greater than 95 percent, and the VOHAP concentration of the regulated material exiting the treatment process is less than 50 ppmw; or (3) the actual HAP mass removal for the treatment process is greater than the required mass removal established for the process.

3. Tank Standards

The tank standards proposed for the off-site waste and recovery operations NESHAP would establish the requirements for tanks using air emission controls to comply with the general standards of the rule. No air emission controls would be required under the rule for a tank in which all regulated material placed in the unit has been treated to remove or destroy organic HAP in accordance with the requirements specified in the general standards. Also, the tank standards would not apply to a tank in which biological treatment of a regulated material is performed under certain conditions specified in the rule; or to a tank designated by the owner or operator to be exempted from using air emission controls in accordance with the rule provisions.

The proposed air emission control requirements for tanks would be applied based on the tank design capacity, the maximum HAP vapor pressure of the regulated material in the tank, and whether the tank is designated an "existing tank" or a "new tank" under the provisions of 40 CFR part 63. Both existing tanks and new tanks in which the maximum HAP vapor pressure of the regulated material in the tank is equal to or greater than 76.6 kPa (approximately 11.1 psi), would be required (regardless of tank design capacity) to manage the regulated material in a tank using a cover that is connected through a closed-vent system to a control device. For affected tanks in which the maximum HAP vapor pressure of the regulated material in the tank is less than 76.6 kPa, different standards are proposed for existing tanks and for new tanks depending on the tank design capacity.

Under the proposed tank standards for existing tanks in which the maximum HAP vapor pressure of the regulated material in the tank is less than 76.6 kPa, use of air emission controls would be required on tanks having a design capacity equal to or greater than 75 m^3 (approximately 20,000 gallons). No air emission controls would be required under the rule for an existing tank having a design capacity less than 75 m^3. For tanks having a design capacity equal to or greater than 75 m^3, an owner or operator would be required to install and operate air emission controls in accordance with the rule requirements. These requirements specify that, unless the maximum HAP vapor pressure of the regulated material in the tank is less than certain limits specified in the rule, the owner or operator install and operate on the tank one of the following air emission control systems: (1) A cover that is connected through a closed-vent system to a control device; (2) a fixed-roof type cover with an internal floating roof that is designed and operated in accordance with the requirements of the new source performance standard (NSPS) for volatile organic liquid (VOL) storage under 40 CFR 60.112b(a)(1); (3) an external floating roof that is designed and operated in accordance with the requirements of the VOL storage NSPS under 40 CFR 60.112b(a)(2); or (4) a pressure tank that is designed to operate as a closed system. Under the proposed rule, an owner or operator would be allowed to use a fixed-roof type cover (without any additional controls) for existing tanks having a capacity less than 151 m^3 (approximately 40,000 gallons) when the maximum HAP vapor pressure of the regulated material in the tank is less than 27.6 kPa (approximately 4.0 psi), and for larger capacity tanks when the maximum HAP vapor pressure of the regulated material in the tank is less than 5.2 kPa (approximately 0.75 psi).

The proposed standards for new tanks in which the maximum HAP vapor pressure of the regulated material in the tank is less than 76.6 kPa would require the use of air emission controls on tanks having a design capacity equal to or greater than 38 m^3 (approximately 10,000 gallons). The same types of air emission control systems specified in the proposed rule for existing tanks (e.g., vent to control device, use floating roof, pressure tank, or use of fixed-roof type covers under certain conditions) would apply to new tanks with the exception that the maximum HAP vapor pressure limits allowed for using fixed-roof type covers without additional controls are lower for new tanks than existing tanks. An owner or operator would be allowed to use a fixed-roof type cover without additional controls for new tanks having a capacity less than 151 m^3 when the maximum HAP vapor pressure of the regulated material in the tank is less than 13.1 kPa (approximately 1.9 psi), and for larger capacity tanks when the maximum HAP vapor pressure of the regulated material in the tank is less than 0.7 kPa (approximately 0.1 psi).

The proposed maximum HAP vapor pressure limits selected for existing tanks that would be allowed to use fixed-roof type covers without additional controls are based on the waste vapor pressure limits established for tanks at hazardous waste treatment, storage, and disposal facilities (TSDF) subject to air rules being developed by the EPA under authority of RCRA section 3004(n) (refer to 56 FR 33490). For today's proposed rulemaking, the EPA considered using the maximum vapor pressure limits established for tanks under the NESHAP for the synthetic organic chemical manufacturing (SOCMI) industry (40 CFR 63 subpart G). Because the sources

subject to both the off-site waste and recovery operations NESHAP and the RCRA air rules are similar, the EPA believes it is appropriate to use the maximum vapor pressure limits established for the RCRA air rules for today's proposed rulemaking also. The EPA requests comment on the selection of the maximum HAP vapor pressure limits proposed for the air emission control requirements for tanks under the off-site waste and recovery operations NESHAP.

4. Surface Impoundment Standards

The proposed air emission control requirements are the same for existing surface impoundments and new surface impoundments. These requirements would not apply to either: a surface impoundment in which all regulated material placed in the unit has been treated to remove or destroy organic HAP in accordance with the requirements specified in the general standards; a surface impoundment in which biological treatment of a regulated material is performed under certain conditions specified in the rule; or a surface impoundment designated by the owner or operator to be exempted from using air emission controls in accordance with rule provisions. For each surface impoundment required to use air emission controls, the owner or operator would be required to use either: a cover that is connected to a closed-vent system vented to a control device; or a floating membrane cover that is designed and operated in accordance with requirements specified in the rule.

5. Container Standards

The proposed air emission control requirements are the same for existing and new containers. These requirements would not apply to either: a container having a design capacity less than or equal to 0.1 m^3 (approximately 26 gallons); a container in which all regulated material placed in the unit has been treated to remove or destroy organic HAP in accordance with the requirements specified in the general standards; or a container designated by the owner or operator to be exempted from using air emission controls in accordance with rule provisions.

For containers used for storage, treatment, and handling of regulated material, the owner or operator would be required to use either: (1) a container that is equipped with a vapor leak-tight cover; (2) a container having a design capacity less than or equal to 0.42 m^3 (approximately 110 gallons) that is equipped with a cover and complies with all applicable U.S. Department of Transportation regulations on packaging hazardous waste for transport under 49 CFR part 178; or (3) a container that is attached to or forms a part of any truck, trailer, or railcar and that has been demonstrated within the preceding 12 months to be organic HAP vapor tight in accordance with the procedure specified in the rule. For containers in which treatment of regulated material is performed, the owner or operator would be required to place the container inside an enclosure that is connected through a closed-vent system to a control device at all times that the container is completely or partially uncovered during the treatment operation. Transfer of regulated material by pumping into a container having a design capacity greater than 0.42 m^3 would be required to be performed using submerged fill loading.

6. Process Vent Standards

The proposed off-site waste and recovery operations NESHAP would regulate organic HAP emissions from process vents on enclosed treatment units. Under the proposed rule, an "enclosed treatment unit" would be defined as a stationary, enclosed unit used for the purpose of treating or processing a regulated material, and for which all materials only enter or exit the unit through enclosed pipes or process vents while the unit is operating. Examples of an enclosed treatment unit include a distillation pot, distillation column, thin-film evaporator, solvent extraction tower, steam stripping tower, and air stripping tower.

The proposed air emission control requirements are the same for existing units and new units. These requirements would not apply to either: an enclosed treatment unit in which all regulated material placed in the unit has been treated to remove or destroy organic HAP in accordance with the requirements specified in the general standards; or an enclosed treatment unit designated by the owner or operator to be exempted from using air emission controls in accordance with rule provisions. For each enclosed treatment unit required to use air emission controls, the owner or operator would be required to connect each process vent on the unit to a closed-vent system vented to a control device.

7. Conveyance System Standards

The proposed off-site waste and recovery operations NESHAP would establish requirements for conveyance systems to control organic HAP emissions occurring during the transfer of a regulated material containing organic HAP between two regulated material management units using air emission controls in accordance with the rule requirements. Under the proposed rule, a "conveyance system" would be defined as a device other than a container used to transfer material to or from tanks, containers, surface impoundments, enclosed treatment units, or other regulated material management units. Examples of a conveyance system include a pipeline, individual drain system (with all associated drains, junction boxes, and sewer lines), channel, flume, gravity-operated conveyor (such as a chute), and mechanically-powered conveyor (such as a belt or screw conveyor).

The proposed air emission control requirements are the same for existing conveyance systems and new conveyance systems. These requirements would not apply to either: a conveyance system in which all regulated material placed in the unit has been treated to remove or destroy organic HAP in accordance with the requirements specified in the general standards; or a conveyance system designated by the owner or operator to be exempted from using air emission controls in accordance with rule provisions.

For each conveyance system required to use air emission controls, the owner or operator would be required to use one of the following systems: (1) a conveyance system which uses a cover that is connected through a closed-vent system to a control device; (2) a conveyance system which uses an enclosure that is connected through a closed-vent system to a control device; (3) a conveyance system which is designed and operated as an enclosed pipeline in which all joints or seams between the pipe sections are permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed flange); (4) a conveyance system which is designed and operated as an individual drain system in accordance with the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346 (b)(1) through (b)(3); or (5) any other conveyance system which is designed to operate as a closed system such that the conveyance system operates with no detectable emissions (as determined by procedures specified under the rule) at all times that regulated material is in the conveyance system except under certain conditions.

8. Equipment Leak Standards

The proposed off-site waste and recovery operations NESHAP would require owners and operators of affected

facilities to control organic HAP emissions from leaks in pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, and product accumulator vessels that either contain or contact a regulated material which is a fluid (liquid or gas) and has a total organic HAP concentration equal to or greater than 10 percent by weight. The equipment leak standards would not apply to equipment that operates less than 300 hours per calendar year, or equipment for which the owner or operator is already complying with the requirements of 40 CFR 63 subpart H. For each equipment component subject to this standard at either an existing source or a new source, the owner or operator would be required to perform the leak detection and repair program and implement the equipment modifications required under 40 CFR 61.241 through 61.247.

9. Air Emission Control Equipment Requirements

Specific design, performance, and operating requirements are proposed for each cover, closed-vent system, and control device installed by the owner or operator to comply with the tank, surface impoundment, container, conveyance system, enclosed treatment unit standards of the rule.

The proposed requirements for covers are determined by the type of cover used and the type of regulated material management unit on which the cover is installed. Requirements are specified for vapor-leak tight covers (i.e covers that operate with no detectable emissions as determined by procedures specified under the rule), external and internal floating roofs installed on tanks, floating membrane covers installed on surface impoundments, and container enclosures requiring continuous or frequent worker access.

Each closed-vent system would be required to operate with no detectable emissions (as determined by procedures specified under the rule). For the proposed rule, any control device could be used that reduces the mass content of either total organic compounds (less methane and ethane) or total HAP in the gases vented to the device by 95 percent by weight or greater. An owner or operator would be allowed to comply with alternative performance requirements for enclosed combustion devices (e.g., thermal vapor incinerators, catalytic vapor incinerators, boilers, and process heaters) and for flares.

10. Test Methods and Compliance Procedures

For affected units using air emission controls in accordance with the rule requirements, no regulated material determination would be required under the proposed rule. An owner or operator would be required to determine the VOHAP concentration or organic HAP vapor pressure of the regulated material being managed in the unit not using air emission controls in accordance with the requirements of the standards. Either analysis of regulated material samples using procedures specified in the rule or the owner's or operator's knowledge of the regulated material could be used could be used for a regulated material determination.

The owner or operator would determine that covers and closed-vent system operates with no detectable emissions by visual inspection and testing the equipment in accordance with the procedures specified in Method 21 under 40 CFR 60 appendix A. Test procedures for control devices would be consistent with procedures specified in existing NESHAP.

11. Monitoring and Inspection Requirements

To ensure that the air emission control equipment is properly operated and maintained, the proposed off-site waste and recovery operations NESHAP would require that the owner or operator periodically inspect and monitor this equipment. Visual inspections and leak detection monitoring using Method 21 would be required for certain types of covers to ensure gaskets and seals are in good condition, and for closed-vent systems to ensure all fittings remain leak-tight. In general, semi-annual inspection and leak detection monitoring of covers is proposed. Annual inspection and leak detection monitoring would be required for closed-vent systems.

Continuous monitoring of control device operation would be required under the proposed rule. This would involve the use of automated instrumentation to measure and record appropriate control device operating parameters that indicate whether the control device is in compliance with the applicable performance requirements of the rule. A more detailed explanation of these proposed monitoring requirements for control devices is presented in section V.E.1 of this notice.

In cases when an owner or operator complies with the off-site waste and recovery operations NESHAP by treating a regulated material to remove or destroy HAP before placing the regulated material in a unit, the EPA is proposing that the owner or operator monitor appropriate operating parameters for the treatment process as described in section V.E.2 of this notice.

12. Recordkeeping and Reporting Requirements

The proposed off-site waste and recovery operations NESHAP would require that the owner or operator to maintain certain records and submit to the EPA certain reports consistent with the recordkeeping and reporting requirements for all NESHAP as specified in the Part 63 general provisions (40 CFR 63 subpart A).

B. Summary of Rule Impacts

Implementation of the proposed off-site waste and recovery operations NESHAP would result in substantial reductions in organic HAP emissions to the atmosphere from off-site waste and recovery operations located in the United States. Furthermore, many of the organic HAP emitted from the off-site waste and recovery operations source category are also volatile organic compounds (VOC). These VOC react photochemically with other chemical compounds in the atmosphere to form ozone. Although the NESHAP proposed today would not specifically require control of VOC emissions from off-site waste and recovery operations, the organic emission control technologies upon which today's rulemaking is based would also significantly reduce VOC emissions from the source category. The EPA estimates that implementation of the proposed off-site waste and recovery operations NESHAP would reduce nationwide organic HAP emissions by approximately 43,000 Mg/yr and reduce nationwide VOC emissions by approximately 52,000 Mg/yr.

The EPA prepared estimates of the cost to owners and operators of implementing the requirements of the proposed off-site waste and recovery operations NESHAP at facilities expected to be subject to the rule. The total nationwide capital investment cost to purchase and install the air emission controls that would be required by the proposed rule is estimated by the EPA to be approximately $49 million. The total nationwide annual cost of the off-site waste and recovery operations NESHAP, as proposed, is estimated to be approximately $24.5 million per year.

II. Background

A. Section 112 Statutory Requirements

Section 112 of the Clean Air Act (CAA) regulates stationary sources of

hazardous air pollutants (HAP). This section was comprehensively amended under Title III of the 1990 Clean Air Act Amendments. The term "stationary source" means any building, structure, facility, or installation that emits or may emit air pollutants. Under the amended CAA section 112(b), Congress listed 189 chemicals, compounds, or groups of chemicals as HAP. The EPA is directed by the CAA section 112 to regulate the emission of these HAP from stationary sources by establishing national emission standards (i.e., NESHAP).

A 1990 amendment to section 112(c) of the CAA requires the EPA to develop and publish a list of source categories that emit HAP for which NESHAP will be developed. The EPA is required to list all known categories and subcategories of "major sources." The term "major source" is defined by the CAA to mean "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate 10 tons per year (ton/yr) or more of any HAP or 25 ton/yr or more of any combination of HAP." The EPA's initial list of categories of major sources of HAP emissions was published in the **Federal Register** on July 16, 1992 (57 FR 31576).

For each NESHAP source category listed by EPA, standards must be developed to control HAP emissions from both new sources and existing sources in accordance with specific statutory directives set out in CAA section 112, as amended. The statute requires the EPA to establish standards under a NESHAP to reflect the maximum degree of reduction in HAP emissions through application of maximum achievable control technology (MACT).

A statutory minimum or baseline to the level of HAP emission control that the EPA can select to be MACT for a particular source category is defined under CAA section 112(d)(3). This minimum HAP emission control level is referred as the "MACT floor." For new sources, the MACT floor is the level of HAP emission control that is achieved in practice by the best controlled similar source. The statute allows standards under a NESHAP for existing sources to be less stringent than standards for new sources. The determination of MACT floor for existing sources is dependent on the nationwide number of existing sources within the source category. For a source category with 30 or more existing sources, the MACT floor is the average emission limitation achieved by the best performing 12 percent of the existing sources.

Once the MACT floors are determined for new and existing sources in a source category, the EPA must establish standards under a NESHAP that are no less stringent than the applicable MACT floors. The Administrator may promulgate standards that are more stringent than the MACT floor when such standards are determined by the EPA to be achievable taking into consideration the cost of implementing the standards as well as any non-air quality health and environmental impacts and energy requirements listed in CAA section 112(d)(2). All owners and operators of sources within the source category must comply with the promulgated NESHAP.

B. Listing of Source Category

On the EPA's initial list of HAP emission source categories published in the **Federal Register** on July 16, 1992 (57 FR 31576), the EPA included one source category which the Agency intended to represent those off-site waste and recovery operations that are not specifically listed as a separate, distinct NESHAP source category such as hazardous waste incineration or municipal solid waste landfills. This source category was titled on the initial list as "solid waste treatment, storage, and disposal facilities." Since the initial source category list was published, the EPA decided that it is appropriate to change the title of this NESHAP source category.

Effective by this notice, the EPA is changing the title of the NESHAP source category subject to today's proposed rule to "off-site waste and recovery operations." This change is appropriate for two reasons: (1) To avoid confusion with the terms "solid waste" and "treatment, storage, and disposal facilities" which have specific meanings within the context of statutory and regulatory requirements in existing rules established by the EPA under authority of the Resource Conservation and Recovery Act (RCRA); and (2) to better distinguish the types of air emission sources addressed by this NESHAP source category from other NESHAP source categories.

C. Summary of Public Participation in Development of Proposed Rule

The EPA published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on December 20, 1993 (58 FR 66336) announcing the EPA's intent to develop a NESHAP for the off-site waste and recovery operations source category. The purpose of the ANPR was to inform owners and operators of affected industries and the general public of the planned scope of the NESHAP rulemaking for the off-site waste and recovery operations source category, and to solicit information that would aid in the development of the rule.

To supplement the Agency's information regarding the off-site waste and recovery operations source category, the EPA requested comments from the public on the ANPR. The EPA specifically requested more information on wastes and recoverable materials characteristics (types, quantities, organic composition), waste management practices, and waste and recoverable material operations emission points and air emission data. A 30-day comment period, from December 20, 1993 to January 19, 1994, was provided for interested parties to submit comments on the ANPR. The EPA received written comments from 16 commenters concerning the ANPR. These comments were considered by the EPA in the development of the proposed off-site waste and recovery operations NESHAP.

D. Relationship of Proposed Rule to Other EPA Regulatory Actions

1. Clean Air Act

a. *Other NESHAP Rulemakings.* Many industrial sectors that manage wastes or recoverable materials containing HAP are listed as specific NESHAP source categories on the initial EPA source category list (57 FR 31576, July 16, 1992). For example, plants and facilities in the NESHAP source categories representing the synthetic organic chemical manufacturing industry, the petroleum refining industry, the pesticide manufacturing industry, and the pharmaceutical manufacturing industry frequently manage some, if not all, of the wastes and recoverable materials generated by the manufacturing processes operated at the facilities at the same location where the materials are generated (i.e, on-site). For NESHAP source categories in which operations to manage waste or recoverable material may occur at the same facility where the material is generated, the EPA is addressing HAP emissions from the management operations as part of the NESHAP being developed for that particular source category.

The NESHAP rule proposed today under 40 CFR 63 subpart DD would apply only to those operations used to manage, convey, or handle waste or recoverable material containing organic HAP which have been generated at other facilities but are not specifically listed as a NESHAP source category. On EPA's initial list of HAP emission

source categories, the following operations are listed as separate NESHAP source categories: municipal solid waste (MSW) landfills; publicly-owned treatment works (POTW); sewage sludge incinerators; hazardous waste incineration units; boilers and industrial furnaces; and hazardous waste remediation activities. For these source categories, separate NESHAP under 40 CFR part 63 are being developed by EPA.

b. *Municipal Solid Waste Combustion Units.* Municipal solid waste combustion units would not be subject to the off-site waste and recovery operations NESHAP. Congress directed the EPA to address air emissions from municipal solid waste combustion units under authority of CAA section 129, as amended by the 1990 Clean Air Act Amendments.

2. Resource Conservation and Recovery Act

The EPA establishes rules for the management of solid wastes under authority of the Resource Conservation and Recovery Act (RCRA). Under authority of subtitle C of RCRA, the EPA has established rules regulating the management of solid wastes determined to be hazardous waste (refer to 40 CFR Parts 260 through 271). Municipal solid wastes and other types of nonhazardous solid wastes are regulated by rules established under authority of subtitle D of RCRA (e.g., refer to 40 CFR Parts 257 and 258).

a. *Definition of Waste.* For the off-site waste and recovery operations NESHAP, the EPA is proposing definitions of "waste" and "recoverable materials" that are consistent with the definitions used by the EPA for other air rules promulgated under the CAA (selection of this definition is explained further in section IV.A of this notice). These definitions define the types of materials considered to be a "waste" or "recoverable material" in a broader context than the definition of "solid waste" that the EPA has historically used for RCRA rulemakings. The proposed definition of "waste" for the off-site waste and recovery operations NESHAP includes all materials defined to be solid wastes under RCRA rules including hazardous wastes. In addition, materials excluded from the RCRA definition of solid waste such as recovered materials recycled back to a process unit and used oil reprocessed for sale as a fuel are included in the definition of "recoverable material" proposed for the off-site waste and recovery operations NESHAP. As a result, certain off-site waste and recovery operations exempted from RCRA rules may be subject to the requirements of the NESHAP rule proposed today.

b. *Duplicative Requirements.* At many facilities where hazardous wastes are managed and wastes are received from off-site, both the off-site waste and recovery operations NESHAP proposed today and existing RCRA air rules under 40 CFR parts 264 and 265 would likely be applicable to the facilities. At these facilities, some operations would be subject to either air emission standards under the off-site waste and recovery operations NESHAP or the air emissions standards under the RCRA air rules. However, in certain situations, some operations would be subject to air emission standards under both sets of rules.

The CAA requires that the requirements of rules developed under the Act be consistent, but avoid duplication, with requirements of rules developed under RCRA. Certain testing, monitoring, inspection, recordkeeping, and other requirements of the proposed off-site waste and recovery operations NESHAP also would be required under the RCRA air rules. The EPA believes that each of these requirements is necessary to assure compliance with and enforce the rules. However, it is unnecessary for owners and operators of those facilities subject to both the off-site waste and recovery operations NESHAP and the RCRA air rules to conduct duplicative waste testing, keep duplicate sets of records, or perform other duplicative actions for the same waste or recoverable material operation. Thus, the EPA requests comment on how applicable requirements under the RCRA air rules should be incorporated into the off-site waste and recovery operations NESHAP to allow owners and operators to demonstrate compliance with both rules without having to repeat duplicative requirements.

3. Pollution Prevention Act

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) establishes the national policy of the United States for pollution prevention. This act declares that: (1) pollution should be prevented or reduced whenever feasible; (2) pollution that cannot be prevented or reduced should be recycled or reused in an environmentally-safe manner wherever feasible; (3) pollution that cannot be recycled or reused should be treated; and (4) disposal or release into the atmosphere should be chosen only as a last resort.

Opportunities for applying pollution prevention to the off-site waste and recovery operations NESHAP are basically limited to pollution treatment prior to disposal or release into the atmosphere. By definition, the off-site waste and recovery operations source category consists of operations used to manage materials that have already been generated at other locations such as a manufacturing plant. Thus, there are no pollution prevention practices such as modifying the manufacturing process to reduce the quantity of materials containing organic HAP generated or to recycle the materials back to the process which can be implemented once the material arrives at an off-site waste and recovery operations facility. The EPA has incorporated the pollution prevention policy into the proposed rule by requiring wastes and recoverable materials containing organic HAP be treated to remove or destroy organic HAP prior to management in units open to the environment. Thus, to the extent possible, pollution prevention has been considered in the development of this rulemaking. Today's proposed NESHAP for the off-site waste and recovery operations source category is consistent with the pollution prevention policy.

III. Source Category Description

A. Hazardous Air Pollutant Types

The specific chemicals, compounds, or groups of compounds designated by Congress to be HAP are listed in CAA section 112(b). Both organic and inorganic chemical compounds are included on this HAP list. The EPA noted in the ANPR for the off-site waste and recovery operations source category its intent to regulate under this NESHAP only organic compounds which have been listed as HAP (58 FR 66337).

The EPA decided not to regulate under the off-site waste and recovery operations NESHAP proposed today emissions of the metals and other inorganic chemical compounds listed as HAP. The primary source of inorganic HAP emissions from off-site waste and recovery operations is combustion units such as waste incinerators and boilers and industrial furnaces burning wastes or recoverable materials for energy. As explained in section II.D.1 of this notice, the EPA is addressing HAP emissions from these combustion sources under separate regulatory actions. Furthermore, the data available to the EPA do not suggest that significant quantities of inorganic HAP are emitted to the air from the off-site waste and recovery operations that would be subject to this NESHAP.

Many different types of organic HAP potentially can be emitted from off-site waste and recovery operations facilities

because of the wide variety of manufacturing processes and other sources which generate the materials sent to these facilities. Selection of the specific organic HAP chemicals for regulation under the off-site waste and recovery operations NESHAP is explained further in section IV.A of this notice.

B. Facility Types

Off-site waste and recovery operations are conducted at many different types of facilities. Some of these facility types are listed as a specific NESHAP source category. The off-site waste and recovery operations source category is intended to represent all of the other facilities where off-waste and recovery operations are conducted but are not specifically included under another NESHAP source category. Based on this premise, the EPA identified the following types of facilities described below to be included (but not limited to) in the off-site waste and recovery operations source category.

1. Hazardous Waste TSDF

Under the RCRA rules regulating the management of wastes determined to be hazardous waste, the EPA has established a permit system for owners and operators of facilities where operations are conducted to treat, store, or dispose of a RCRA hazardous waste. A facility subject to RCRA permitting requirements is termed a treatment, storage, and disposal facility (TSDF). A RCRA hazardous waste may be generated on the same site where a TSDF is located, or may be generated at one site and then transported to a TSDF at a separate location. Wastes not designated as RCRA hazardous waste are also managed at some TSDF. Although a waste may not specifically designated as a RCRA hazardous waste, this waste can still contain significant quantities of organic constitutes listed as HAP under the CAA.

The EPA has conducted nationwide surveys to collect information regarding hazardous waste management practices. Data from the most recent surveys indicate that approximately 2,300 TSDF were operating in the United States in 1986. At 710 of these TSDF, owners and operators reported managing RCRA hazardous wastes that are generated off-site. The EPA survey data indicate that approximately 240 of the 710 TSDF that receive waste from off-site also manage wastes other than RCRA hazardous waste.

2. Industrial Waste Landfill Facilities

Many landfill facilities throughout the Unites States are dedicated to the disposal of solid wastes other than those defined as RCRA hazardous wastes. Landfills accepting household wastes are defined under RCRA rules to be municipal solid waste (MSW) landfill units. No MSW landfill units are included in the off-site waste and recovery operations source category because these units are listed as a separate NESHAP source category. However, some other landfills are operated by waste management companies that will accept only industrial nonhazardous wastes (i.e., these landfills do not accept any household waste or RCRA hazardous waste).

The EPA estimates that there are approximately 10 industrial landfills currently operating that accept only nonhazardous industrial process wastes. These landfills receive a wide range of wastes that may contain significant amounts of organic HAP. Furthermore, the EPA estimates that nationwide there are approximately an additional 1,800 construction and demolition debris landfills currently in operation that can be included in this segment of the off-site waste and recovery operations source category. However, the EPA does not expect wastes received at construction and demolition debris landfills to contain significant amounts of organic HAP.

3. Industrial Wastewater Treatment Facilities

Analogous to landfills, many waste treatment facilities are operated by municipal governments and private companies throughout the United States for the treatment of wastewaters. Wastewater treatment facilities accepting residential and commercial wastewaters are considered to be publicly owned-treatment works (POTW). No POTW are included in the off-site waste and recovery operations source category because POTW are listed as a separate NESHAP source category. In addition to POTW, some privately-owned wastewater treatment facilities process nonhazardous wastewaters received from off-site sources. A nationwide survey was conducted by the EPA of wastewater treatment facilities operating in 1989. Using these survey data, a data base excluding POTW was created. The results of this survey indicate that 15 wastewater treatment facilities were operating nationwide which were neither a POTW nor a hazardous waste TSDF but did process wastewaters received from off-site sources that potentially could generate wastewaters containing organic HAP.

4. Recycled Used Oil Management Facilities

Used oils from motor vehicles and other sources potentially can contain organic chemicals, such as benzene, which have been listed as HAP under CAA section 112(b). Although the management of used oils which are recycled is regulated by separate rules promulgated by the EPA under authority of RCRA section 3014, these rules do not address air emissions from used oil management facilities.

The EPA gathered information regarding recycled used oil management practices in the United States for the development of the RCRA standards. This information indicates that approximately 2,800 million liters of used oil enters the commercial used oil recycling market each year. Approximately three-fourths of this recycled used oil is sent to facilities categorized by EPA as "used oil processors." Used oil processors typically collect used motor oil and industrial lubricating oils. These oils are processed to remove water and sediments from the oils. The processors then sell the oil as a fuel for burning primarily in boilers, furnaces, and space heaters. There were 182 used oil processing facilities operating in the United States in 1991. The remainder of the recycled used oil is sent to facilities categorized as "used oil re-refiners." At these facilities the used oil is processed into base lube oil stocks and other products. In 1991, there were four used oil re-refining facilities operating in the United States. Several companies have expressed interest in expanding used oil re-refining capacity in the United States.

5. Oil and Gas E&P Waste Management Facilities

There are a variety of wastes and recoverable materials generated during oil and gas exploration and production (E&P). The majority of these materials are managed on-site at the production site (i.e., at the location of the well). However, some E&P wastes and recoverable materials generated at the production site that may contain organic HAP are subsequently sent to off-site crude oil reclamation and land treatment facilities.

The EPA gathered information regarding E&P waste and recoverable material management practices from EPA conducted site visits and existing industry sponsored surveys. Nationwide, approximately 100,000 Mg/yr of E&P wastes and recoverable materials are sent to off-site crude oil reclamation facilities. These materials consist mostly of tank bottoms from

crude oil storage tanks or produced water storage tanks. In addition, approximately 135,000 Mg/yr of E&P waste sludges are managed in off-site land treatment operations.

6. Other Facilities

In addition to facilities that are in business to manage wastes or recoverable materials received from other generators, some facilities that provide support services may indirectly receive wastes or recoverable materials which are potential organic HAP emission sources. Two types of such facilities have been identified by the EPA: (1) Facilities where empty drums previously used to hold wastes or recoverable containing organics are cleaned and reconditioned for reuse; and (2) truck terminal facilities at which tank trucks used for chemical waste or recoverable material transport are cleaned and rinsed prior to being used to transport a new load. At both of these types of facilities, organic HAP emissions can occur from the wastewater treatment system operated at the facility to treat the wastes and cleaning solutions drained from drums or truck tanks as a result of the container cleaning operation. Wastewater treatment operations are expected to be the primary source of organic HAP emissions at these types of facilities.

The need for and frequency of cleaning a drum and tank truck depends on the type of service in which the container is used. If drums and tank trucks are reused for the same type of product or wastes (i.e., dedicated service), the containers do not need to be cleaned between each use. Only when a drum or tank truck is used for different types of products or wastes (i.e. nondedicated service) is there frequent cleaning of the containers. Of the approximately 45 million drums used annually in the United States, about 5.6 million are estimated to be in nondedicated service. Approximately 20,000 tank trucks of the nationwide total of 91,000 are estimated to be in nondedicated service.

C. Nationwide Organic HAP Emissions

The EPA estimated organic HAP emissions from typical or average size facilities in each of the off-site waste and recovery operations facility segments described in the previous section of this notice using the best information available to the Agency at the time the estimates were completed. The type, amount, and date of this information varied for each of the different off-site waste and recovery operation facility segments. The estimate results are presented in the BID for this proposed rulemaking. Based on these estimates, the EPA identified the following off-site waste and recovery operations facility segments likely to include some individual facilities that are major sources of HAP emissions as defined under CAA section 112: (1) Hazardous waste TSDF; (2) industrial waste landfills other than construction and demolition debris landfills; (3) industrial wastewater treatment facilities; (4) crude oil reclamation facilities and E&P waste land treatment facilities; and (5) used oil re-refining facilities.

The EPA estimates that there are the following numbers of existing off-site waste and recovery operations facilities in the United States: 710 hazardous waste TSDF receiving wastes from off-site; 10 industrial waste landfills receiving nonhazardous industrial waste other than construction and demolition debris from off-site; 15 privately-owned industrial wastewater treatment facilities; 11 crude oil reclamation facilities; 15 E&P waste land treatment facilities; and 4 used oil re-refineries. Many but not all of these facilities would be designated as major sources of HAP emissions as defined under CAA section 112. Insufficient information is available the EPA to project numbers for new off-site waste and recovery operations facilities. The EPA is requesting information from affected industries and other interested parties to improve the Agency's profile of existing and new off-site waste and recovery operations in the United States.

The total nationwide organic HAP emissions from the off-site waste and recovery operations source category are estimated by the EPA to be approximately 51,500 megagrams of organic HAP per year (Mg/yr). Approximately 90 percent of these organic HAP emissions (approximately 46,000 Mg/yr) are estimated to occur from the operations at hazardous waste TSDF receiving waste or recoverable materials from off-site.

IV. Development of Regulatory Alternatives

A. Selection of Source Category and Pollutants for Control

Off-site waste and recovery operations were included as a source category on the EPA's initial list of HAP source categories (refer to section II.B of this notice). As previously explained, the EPA intends this source category to address HAP emissions only from those waste and recovery operations that are not included in another separate NESHAP source category or are being addressed by other EPA regulatory actions. Consequently, the following waste and recovery operations that receive materials from other facilities are specifically excluded from the off-site waste and recovery operations source category because these operations have been listed by the EPA as separate NESHAP source categories: hazardous waste incineration, municipal solid waste landfills, publicly-owned treatment works, sewage sludge incinerators, site remediation activities, and industrial boilers and process heaters.

Wastes and recoverable materials sent to the facilities selected for regulation under the off-site waste and recovery operations NESHAP are generated by a wide variety of manufacturing and production processes as well as other recycling, reprocessing, or waste management operations. Consequently, many of the organic chemicals or groups of chemicals listed as HAP under CAA section 112(b) may be present in the wastes or recoverable materials sent to off-site waste and recovery operations facilities.

It is not appropriate to select all organic HAP listed under CAA section 112(b) for regulation under the off-site waste and recovery operations NESHAP. Some specific organic chemicals that are designated as HAP have no or minimal potential to be emitted to the atmosphere from off-site waste and recovery operations. For other organic HAP chemicals that may be emitted from off-site waste and recovery operations, there are limits to the detectability of some of these chemicals in wastes by the test methods currently available to implement the off-site waste and recovery operations NESHAP because of properties inherent in the sampling and analysis protocol. Consequently, the EPA decided it is appropriate to develop a list of the specific organic HAP chemicals to be regulated by this rulemaking.

To select which organic HAP chemicals would be regulated under the off-site waste and recovery operations NESHAP, the EPA evaluated all chemicals or groups of chemicals listed as HAP in CAA section 112(b). Among the factors included in the EPA's evaluation was an assessment of the aqueous and organic volatility characteristics of each HAP chemical, the ability of the analytical test methods to quantitate a HAP chemical, and the aqueous solubility of a HAP chemical. Based on the evaluation, the EPA selected the specific organic HAP chemicals listed in Table 1 to the proposed rule (to obtain a copy of this table in the regulatory text of the

proposed rule refer to the beginning of the **SUPPLEMENTARY INFORMATION** section of this notice). The EPA requests comment on the list of HAP chemicals that the Agency is proposing to be regulated under the off-site waste and recovery operations NESHAP.

The list of organic HAP selected for regulation under the off-site waste and recovery operations NESHAP contains many different types of organic chemicals. The EPA decided to develop a single set of regulatory alternatives for the off-site waste and recovery operations source category to control organic HAP emissions as a class as opposed to attempting to develop a series of regulatory alternatives to control emissions of each individual organic HAP chemicals on the list. Consequently, the control technologies considered for the regulatory alternatives are directed towards the control total organic HAP emissions.

It is EPA's intent that the NESHAP address waste and recovery operations receiving from other facilities those materials that potentially can emit significant quantities of the organic chemicals on the HAP list for the rule. As explained in section II.D.2.a of this notice, the EPA has developed definitions for different types of wastes to implement the Agency's waste management rules promulgated under authority of RCRA. However, certain wastes and recoverable materials that have been specifically excluded from the definitions of waste adopted for these RCRA rules may still contain organics listed as HAP under CAA section 112(b). Consequently, simply adopting the definitions already used by the EPA for wastes under the RCRA rules could allow certain off-site waste and recovery operations that emit organic HAP to remain unregulated. Therefore, the EPA decided that to fulfill the congressional directives of CAA section 112, it is necessary to define the types of materials to be regulated under this CAA rulemaking in a broader context than the EPA has historically used for the RCRA rules.

For the off-site waste and recovery operations source category, the EPA decided to adapt the definition of "waste" adopted for the benzene waste operations NESHAP (40 CFR 60 subpart FF). Based on this definition, the EPA created separate terms for "waste" and "recoverable materials" to be used for the off-site waste and recovery operations NESHAP. For this rulemaking, the EPA is proposing to define "waste" as any material generated from industrial, commercial, mining, or agricultural operations or from community activities that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded or discharged. The EPA is proposing to define "recoverable material" for this rulemaking as any material generated from industrial, commercial, mining, or agricultural operations or from community activities that is recycled, reprocessed, reused, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being recycled, reprocessed, or reused. Based on these definitions, materials affected by this rulemaking include those materials determined to be hazardous wastes under the RCRA rules, solid wastes that are not hazardous wastes under RCRA rules, and secondary materials such as used, surplus, and scrap materials that are either recycled for recovery of reusable materials or reprocessed for sale as new products.

B. Subcategorization

Subcategorization of a source category is sometimes appropriate for a rulemaking when industrial segments within a source category require application of different types of control techniques. In developing today's proposed rule, the EPA considered subcategorization of the off-site waste and recovery operations source category and decided not to propose subcategories for the off-site waste and recovery operations NESHAP.

As described in section III.B of this notice, the EPA identified several different industrial segments to be included in the off-site waste and recovery operations source category. Most of these off-site waste and recovery operations facilities are also hazardous waste TSDF (refer to section III.C of this notice). However, the quantity and type of organic HAP emissions from an off-site waste and recovery operations facility are not dependent upon whether a particular facility is subject to RCRA hazardous waste management rules. As previously described, off-site waste and recovery operations facilities can receive materials that are not hazardous wastes under the RCRA rules but still contain organics listed as HAP under CAA section 112(b). Furthermore, common organic HAP control technologies are applicable to the operations used at all of the off-site waste and recovery operations facility types. There are no significant differences in the organic HAP emissions or the control technologies applicable to controlling these emissions from any of the off-site waste and recovery operations facility types. Thus, based upon these factors, the EPA concluded that designation of separate subcategories for the purpose of developing the off-site waste and recovery operations NESHAP is not warranted.

C. Selection of Emission Points

For purpose of developing regulatory alternatives which could be effectively compared in developing this rulemaking, the EPA identified the predominate types of emissions points at off-site waste and recovery operations facilities where organic HAP emissions occur. Five emission point type classifications were designated as follows: tanks, containers, land disposal units, process vents, and equipment leaks.

1. Tanks

The tank emission point type for the off-site waste and recovery operations source category represents the organic HAP emissions from wastes or recoverable materials containing organic HAP stored or treated in tanks. These tanks include wastewater treatment tanks.

2. Containers

The container emission point type for the off-site waste and recovery operations source category represents the organic HAP emissions from wastes or recoverable materials containing organic HAP stored, treated, or otherwise handled in drums, dumpsters, roll-off boxes, trucks, and railcars.

3. Land Disposal Units

The land disposal unit emission point type for the off-site waste and recovery operations source category represents the organic HAP emissions from resulting from the disposal of wastes containing organic HAP in surface impoundments, landfills, land treatment units, and waste piles.

4. Process Vents

The process vent emission point type for the off-site waste and recovery operations source category represents the organic HAP emissions from process vents on enclosed treatment processes other than processes which burn the waste or recoverable material (e.g., incinerators, boilers, furnaces). Examples of enclosed treatment processes included in this emission point type are distillation units, thin-film evaporators, solvent extraction units, air stripping units, and steam stripping units.

5. Equipment Leaks

The equipment leak emission point type for the off-site waste and recovery operations source category represents the organic HAP emissions from gaseous and liquid leaks in ancillary equipment used to operate units managing, conveying, or handling wastes or recoverable materials. This ancillary equipment includes pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, and product accumulator vessels.

D. Definition of Source

To develop a NESHAP, the EPA first defines the source category and determines the types of HAP emitted from this source category that are to be controlled by establishing emission standards. Within a source category, the EPA must next decide which of the sources of HAP emissions (i.e., emission points or groupings of emission points) are most appropriate for establishing separate emission standards in the context of the CAA statutory requirements and the industry operating practices for the particular source category. The EPA considered three options for defining "source" for the off-site waste and recovery operations NESHAP.

The first option is to define the source in a very broad context as the entire facility. This option was rejected by the EPA for the off-site waste and recovery operations NESHAP because it would be very difficult to apply a single facility-wide emission limitation level for MACT to all off-site waste and recovery operations facilities for several reasons. First, the mechanism by which organic HAP are emitted to the atmosphere and the types of air emission controls applicable to reducing these emissions vary widely for the emission point types identified for off-site waste and recovery operations. For example, covers frequently are installed on tanks to control air emissions while work practice programs are used to control air emissions from equipment leaks. Furthermore, not all off-site waste and recovery operations at a particular facility may be subject to this rulemaking. As previously explained, certain types of waste combustion units, landfill units, and other operations are being addressed by separate EPA regulatory actions. Finally, some waste and recovery operations at a particular facility may be dedicated to managing only wastes or recoverable materials generated on-site and, thus, would not be subject to this rulemaking.

A second option is to define the source in a more narrow context as the entire operation used to manage a particular waste or recoverable material from the point where the material enters the facility through the point where the material exits the facility or, if it is a waste, disposed on-site. Under this definition, the source would consist of a mix of different types of emission points representing the sequence of units in which the waste or recoverable material is stored, conveyed, treated, and, in some cases, disposed. Under this option, a single emission limitation for MACT would be established for the entire group of emission points comprising the management sequence used to handle the waste or recoverable material. This second option for defining sources under the off-site waste and recovery operations NESHAP was also rejected by the EPA as inappropriate. Unlike manufacturing or production processes that produce a specific product, the operations used to manage a particular type of waste or recoverable material cannot be readily characterized by one or even several standardized process configurations which are used throughout the industrial segment representing the source category. The types, configurations, and sequencing of units used for operations handling a particular type of waste or recoverable material are not consistent, but instead can vary widely from one facility to the next. Therefore, the EPA concluded that this option is not an appropriate approach for defining sources for the off-site waste and recovery operations NESHAP.

The final option considered by the EPA is to further narrow the definition of source to the individual emission points identified for the source category (*i.e.*, tanks, containers, land disposal units, process vents, and equipment leaks). Under this option, an overall emission limitation for MACT would be established for each emission point type. The EPA believes that this option is the most appropriate approach for defining sources for the off-site waste and recovery operations NESHAP. This approach defines the source in terms of common types of units used at off-site waste and recovery operations facilities for handling all types of wastes and recoverable materials. Also, this approach to defining sources is consistent with other EPA air rules for waste and recovery operations. Therefore, for the off-site waste and recovery operations NESHAP, the EPA is proposing to define the source to be each of the individual emission point types.

E. Determination of MACT Floor

The statutory requirements under CAA section 112 for determination of the MACT floor are explained in section II.A of this notice. As explained in section III.C of this notice, the off-site waste and recovery operations source category contains more than 30 existing sources nationwide. Therefore, for the off-site waste and recovery operations NESHAP, the MACT floor for existing sources is defined the average emission limitation achieved by the best performing 12 percent of existing sources. The MACT floor for new sources is defined by the emission control that is achieved in practice by the best controlled similar source.

1. MACT Floor for Existing Sources

a. Existing Tanks. The MACT floor for existing tanks at off-site waste and recovery operations facilities is determined to be use of covers on tanks managing wastes or recoverable materials with a VOHAP concentration equal to or greater than 100 ppmw. This floor determination is based on consideration of data for site-specific tank management practices reported at 540 of the 710 hazardous waste TSDF and existing EPA air emission standards for tanks.

The EPA's review of its tank data base for the off-site waste and recovery operations source category indicates that most tanks (significantly more than 12 percent) managing waste or recoverable materials containing organic HAP are covered tanks. A small portion of these tanks also are reported to use more effective air emission controls such as venting the tank to a control device or using a floating roof on the tank. However, the higher level of air emission control achieved by this segment of tanks does not represent the average of the top 12 percent of tanks listed in the data base. Thus, the EPA determined that the air emission control technology for the existing tank MACT floor is use of a cover.

For other source categories, the EPA has established the need to use a cover or other air emission controls on a tank based on a characteristic parameter of the materials placed in the tank. The EPA believes that using this approach provides an effective and enforceable means for applying air emission controls to those tanks with the potential for organic air emissions and not requiring the unnecessary installation of controls on tanks with no or little potential for organic air emissions. Consequently, to complete

the definition of the MACT floor for tanks at off-site waste and recovery operations facilities, an applicability cutoff provision (referred to hereafter in this notice as an "action level") is needed to distinguish the tanks at off-site waste and recovery operations facilities that need to use air emission controls.

Because of the need to periodically confirm that a material placed in a tank remains below the action level selected to determine applicability, the indicator parameter must be in a format that is relatively simple to determine by an affected facility owner or operator and can be expeditiously checked by EPA or State enforcement personnel. Considering this requirement, the EPA evaluated possible action level formats and decided that an action level format based on the volatile organic HAP concentration of the materials as determined using EPA Method 305 is appropriate for identifying those tanks used for off-site waste and recovery operations that are expected to have little or no potential for organic HAP emissions.

The data available to the EPA at this time for the off-site waste and recovery operations source category are insufficient to perform a rigorous statistical analysis for the purpose of establishing the minimum VOHAP concentration value for the wastes or recoverable materials managed in each of the tanks listed in the data base and reported to use air emission controls. From a qualitative perspective, application of tank air emission controls is not needed when the material in the tank has little or no potential for organic HAP emissions. In general, these wastes or recoverable materials can be characterized as materials having low VOHAP concentrations. The EPA considered a range of possible values to establish the VOHAP concentration limit. Based on consideration of available information regarding the potential for organic HAP emissions from off-site waste and recovery operations, the EPA concluded that a VOHAP concentration value of 100 ppmw would best represent the MACT floor for existing tanks required to use air emission controls.

Using a VOHAP concentration value of 100 ppmw also allows owners and operators to use several different methods for determining the VOHAP concentration of a waste or recoverable material. This is an important factor considering the diversity of wastes and recoverable materials potentially subject to the off-site waste and recovery operations NESHAP and the potential interferences of the quantitation limits of certain analytical methods by non-HAP organic chemicals in the material. Additionally, selection of 100 ppmw would require most existing tanks managing wastes or recoverable materials having organic HAP emissions to use air emission controls consistent with other EPA regulatory actions related to off-site waste and recovery operations.

Many waste and recovery operations facilities subject to this regulation will also be subject to other air emission standards. The EPA is aware that being subject to several standards with differing action levels may create confusion in the regulated community. To the extent possible within the requirements of the Clean Air Act, the EPA wishes to minimize discrepancies between the action level in the off-site waste and recovery operations NESHAP and other emission standards affecting waste and recovery operations. The EPA therefore requests comment on the 100 ppmw VOHAP concentration action level, as well as information that can be used to support alternative action levels, such as 500 ppmw. Specifically, the EPA requests information on action levels for surface impoundments and other land disposal units.

b. Existing Containers. The MACT floor for existing containers at off-site waste and recovery operations facilities is determined to be the use of covers on containers managing wastes or recoverable materials with a VOHAP concentration equal to or greater than 100 ppmw. The number and type of containers used to manage organic HAP containing wastes or recoverable materials at off-site waste and recovery operations vary from site-to-site. Furthermore, at any off-site waste and recovery operations facility, the number of drums, roll-off boxes, or other containers at the site can often fluctuate on a weekly or monthly basis depending on the number and origin of new material shipments received at the facility during a particular week or month. Thus, no data are available to the EPA which allow a statistical determination of the type of air emission controls used on the average of the top 12 percent of containers located at off-site waste and recovery operations facilities or the VOHAP concentration of wastes or recoverable materials handled in containers. Based on existing RCRA rules for containers handling hazardous waste and observations by EPA representatives during site visits to facilities that manage wastes in containers, the EPA concluded that the average emission limitation achieved by the best performing 12 percent of containers used to handle wastes and recoverable materials containing organic HAP is the level of control achieved by the use of covers. Thus, the EPA determined that the air emission control technology for existing container MACT floor is the use of a cover.

The EPA selected a VOHAP concentration value of 100 ppmw to be the action level for the MACT floor for existing containers consistent with the level selected for existing tanks. Containers such as drums, tank trucks, roll-off boxes, and tank rail cars are a primary means used to ship materials to off-site waste and recovery operations facilities. In many cases, these materials are temporarily stored at the off-site waste and recovery operations facility directly in the shipping containers or are transferred to tanks or other management units prior to treatment and disposal, in the case of wastes, or prior to reprocessing and shipment, in the case of recoverable materials. The most volatile of the organic HAP in a waste or recoverable material will be emitted soon after being exposed to the atmosphere. If containers at the off-site waste and recovery operations facility are not controlled to the same level required of tanks, a significant portion of the organic HAP in the waste or recoverable material will be emitted before the material is transferred to the controlled tanks or other controlled management units. Consequently, the organic HAP emission reduction effectiveness of applying air emission controls on downstream tanks and other management units would be significantly diminished since a significant portion of the organic HAP in the waste or recoverable material had already escaped to the atmosphere from open containers.

c. Existing Land Disposal Units. The MACT floor for existing land disposal units at off-site waste and recovery operations facilities is determined to be no disposal of wastes that contain equal to or greater than 100 ppmw VOHAP concentration in open land disposal units. No data are available to the EPA which allow a statistical determination of the type of air emission controls used on the top 12 percent of land disposal units located at off-site waste and recovery operations facilities or the VOHAP concentration of the wastes disposed of in these units. However, since most of the facilities operating land disposal units included in the off-site waste and recovery operations source category are also hazardous waste TSDF, many of the land disposal units are subject to treatment standards under the RCRA land disposal restrictions (LDR) codified in 40 CFR part 268.

The LDR treatment standards require hazardous waste TSDF owners and operators to treat certain types of hazardous waste to reduce the toxicity or mobility of specific chemicals contained in the waste before the owner or operator can place the waste in a surface impoundment, land treatment unit, landfill, or wastepile. The treatment standards of the RCRA LDR are established by requiring treatment below constituent specific concentration limits that vary by type of hazardous waste or by requiring use of specific treatment processes. Many of the chemicals for which LDR treatment standards have been established are also listed as HAP. Thus, the EPA determined that the air emission control technology for the existing land disposal unit MACT floor is treatment of wastes to remove or destroy organic HAP in the waste prior to placing the waste in the land disposal unit.

Treatment of the waste to reduce the organic HAP concentration to a level of 100 ppmw was selected for the MACT floor for existing land disposal units based on the same reasoning used in determining the MACT floors determined for existing tanks and containers (i.e., to distinguish those units with little or no potential to emit organic HAP). The degree of air emission control achieved by placing a waste with a VOHAP concentration above 100 ppmw in tanks and containers using air emission controls would be lost if these wastes are ultimately allowed to be placed in land disposal units without first removing or destroying the organic HAP to a level consistent with the level used to apply air emission controls to tanks and containers.

d. Existing Process Vents. The MACT floor for process vents used on treatment processes subject to the off-site waste and recovery operations NESHAP is determined to be application of air emission controls on each affected process used to treat wastes or recoverable materials with a VOHAP concentration equal to or greater than 100 ppmw as determined at the point where the material enters the facility. All process vents on an affected process are to be connected through a closed-vent system to a control device with a minimum 95 percent organic HAP emission control efficiency.

As previously explained, most facilities in the off-site waste and recovery operations source category are also hazardous waste TSDF. Distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes that are treating hazardous waste at these TSDF are subject to the existing RCRA air emission standards for process vents under 40 CFR 264 subpart AA and 40 CFR 265 subpart AA (hereafter referred to in this notice as the "subpart AA rules"). The EPA concluded that it is not appropriate to directly transfer the air emission control requirements of the subpart AA rules to the MACT floor for the off-site waste and recovery operations NESHAP. Instead, this MACT floor is based on adapting, to the extent applicable and relevant, the air emission control requirements of the subpart AA rules.

The subpart AA rules require a TSDF owner or operator to identify all process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes that are treating hazardous waste having an annual average total organic concentration equal to or greater than 10 ppmw (i.e., vents affected by the subpart AA rules). Total organic emission rates for each affected vent and for the entire facility from all affected vents must be determined. The total facility process vent emission rate must then be compared to two specified emission rate limits (3 pounds of total organic emission per hour and 3.1 tons of total organic emission per year) to determine whether the owner or operator must use additional air emission controls for the affected vents. If the total facility process vent emission rate exceeds either of the specified emission limits, then the owner or operator is required to implement control measures that will reduce total facility process vent organic emissions to below both of the emission limit levels, or to install air emission controls to reduce total facility process vent organic emissions by at least 95 weight percent.

Adopting a 10 ppmw action level for the process vent MACT floor corresponding to the 10 ppmw total organic concentration value used for subpart AA rules was considered by the EPA but determined not to be appropriate. The 10 ppmw value used for the subpart AA rule is not the sole regulatory criterion (i.e., action level) by which the need to apply air emission controls to affected vents is determined. The need to apply controls under the subpart AA rules is determined by the total organic emission rates for each affected vent and for the entire facility from all affected vents. The data available to the EPA at this time for the off-site waste and recovery operations source category are insufficient to correlate a VOHAP concentration action level value equivalent to the total organic emission rate limits used for the subpart AA rules. Consequently, the EPA relied on a qualitative assessment to select a VOHAP concentration action level which would exclude those treatment processes having little or no potential for organic HAP emissions. A VOHAP concentration action level of 100 ppmw was selected for the MACT floor for existing process vents consistent with the rationale used to select the action level for tanks, containers, and land disposal units.

e. Existing Equipment Leaks. The MACT floor for equipment leaks is determined to be control of emissions from leaks in ancillary equipment containing or contacting wastes or recoverable materials with total organic HAP concentrations equal to or greater than 10 percent by implementing leak detection and repair (LDAR) work practices and equipment modifications. Most off-site waste and recovery operations facilities are also hazardous waste TSDF. Thus, ancillary equipment operated at these facilities to treat hazardous waste are subject to the existing RCRA organic air emission standards for TSDF equipment leaks (40 CFR 264 subpart BB and 40 CFR 265 subpart BB). These standards require implementation of a LDAR program and modifications to certain types of ancillary equipment operated at the facility that handle hazardous waste having a total organic concentration equal to or greater than 10 percent. The LDAR and equipment requirements are consistent with existing NSPS process equipment leak standards promulgated by the EPA under CAA section 111 (i.e., 40 CFR 60 subparts VV, GG, and KK) and for certain NESHAP process equipment leak standards promulgated under CAA section 112 (i.e., 40 CFR 61 subpart V).

2. MACT Floor for New Sources

The MACT floor for new sources is identical to the MACT floors determined by the EPA for existing sources with the exception of the MACT floor for new tanks and new containers. For the emission point types other than tanks or containers, the MACT floor determined for existing sources also represents the emission control that is achieved in practice by the best controlled similar source.

a. New Tanks. The MACT floor for new tanks is determined to be use of a cover vented to a control device that reduces organic HAP emissions by 95 percent (or equivalent floating roof technology) for those new tanks in which the organic HAP vapor pressure of the waste in the tank is equal to or greater than 0.1 kPa (approximately 0.07 psi). This is the level of emission control that is required for new tanks

under the Hazardous Organic NESHAP (40 CFR 63 subpart G). The EPA concluded that these types of emission controls represent the emission control level achieved in practice by the best controlled sources similar to the types of new tanks anticipated by the EPA to be built at off-site waste and recovery operations facilities and used for management of wastes or recoverable materials containing organic HAP.

b. New Containers. The MACT floor for new containers is determined to be the use of covers and submerged loading for containers in which waste or recoverable material is placed having a VOHAP concentration equal to or greater than 100 ppmw. The EPA's review of its container data base for the off-site waste and recovery operations source category indicates that some existing TSDF owners and operators (but significantly less than 12 percent) reported using submerged fill to load material containing organic HAP into containers.

F. Selection of Regulatory Alternatives

1. Regulatory Alternatives for Existing Sources

Different regulatory alternatives for control of organic HAP emissions from existing sources at off-site waste and recovery operations facilities were defined. One regulatory alternative was defined by combining the MACT floor determinations for each of the five emission point types (labeled "Regulatory Alternative 1"). Four additional regulatory alternatives for the off-site waste and recovery operations source category were defined which would provide increasingly greater amounts of total organic HAP emission reduction from the baseline level of organic HAP emissions (labeled "Regulatory Alternative 2" through "Regulatory Alternative 5"). Additional organic HAP emission control requirements were added to the controls defined for Regulatory Alternative 1 in order of increasing emission control incremental cost effectiveness.

Regulatory Alternative 1 requires application of air emission controls on tanks, containers, and treatment processes managing waste or recoverable material with a VOHAP concentration equal to or greater than 100 ppmw as determined at the point of where the material first enters the facility. For tank and container emission points, Regulatory Alternative 1 requires use of a cover on each unit. For process vent emission points, Regulatory Alternative 1 requires connecting the process vent to a control device that reduces organic HAP emissions by 95 percent. For land disposal unit emission points, Regulatory Alternative 1 requires treatment of the wastes prior to disposal to reduce the waste VOHAP concentration to less than 100 ppmw. For equipment leak emission points, Regulatory Alternative 1 requires for equipment handling waste or recoverable material streams with a total organic HAP concentration equal to or greater than 10 percent implementation of a leak detection and repair (LDAR) program and certain equipment modifications. The requirements of the LDAR program and equipment modifications are consistent with the existing NSPS process equipment leak standards promulgated by the EPA under CAA section 111 (i.e., 40 CFR 60 subparts VV, GG, and KK) and for certain NESHAP process equipment leak standards promulgated under CAA section 112 (i.e., 40 CFR 61 subpart V).

Regulatory Alternative 2 adds additional control requirements for containers. The control requirements for the other emission points remain the same as for Regulatory Alternative 1. In addition to using covers on containers, Regulatory Alternative 2 requires use of submerged fill when wastes or recoverable materials are transferred into containers by pumping.

Regulatory Alternative 3 adds additional control requirements for tanks. The control requirements for the other emission points remain the same as for Regulatory Alternative 2. Tanks in which the organic HAP vapor pressure of the waste or recoverable material in the tank is equal to or greater than 5.2 kPa (approximately 0.75 psi) are required to use a cover and be vented to a control device that reduces organic HAP emissions by 95 percent. Tanks in which the organic HAP vapor pressure of the waste or recoverable material in the tank is less than 5.2 kPa use a cover without additional controls (i.e., a cover only without being vented to a control device).

Regulatory Alternative 4 changes the LDAR program requirements for the equipment leak emission point category. The control requirements for the other emission points remain the same as for Regulatory Alternative 3. For Regulatory Alternative 4, the LDAR program would be conducted in accordance with procedures consistent with the Hazardous Organic NESHAP (HON) promulgated by the EPA under 40 CFR 63 subpart H.

Regulatory Alternative 5 lowers the organic HAP vapor pressure level for tanks required to be vented to a control device. The control requirements for the other emission points remain the same as for Regulatory Alterative 4. Tanks in which the organic HAP vapor pressure of the waste or recoverable material in the tank is equal to or greater than 0.7 kPa (approximately 0.1 psi) use a cover and are vented to a control device that reduces organic HAP emissions by 95 percent. Tanks in which the organic HAP vapor pressure of the waste or recoverable material in the tank is less than 0.7 kPa use a cover without additional controls.

2. Regulatory Alternatives for New Sources

Based on current waste management trends, the EPA expects very few, if any, new off-site waste and recovery operations facilities to be built in the foreseeable future. A more likely scenario is construction of new units (such as tanks or treatment units) at existing off-site waste and recovery operations facilities to expand facility capacity, replace existing surface impoundments, or add new treatment capability or expand treatment capacity. However, the available information to the EPA is insufficient to make projections of the numbers or types of new sources to be built during the next 5 years.

A regulatory alternative representing the MACT floor for new sources at off-site waste and recovery operations facilities was defined by combining the MACT floor determinations for new sources. No regulatory alternatives beyond the MACT floor were identified for new sources.

The regulatory alternative for new sources requires application of air emission controls on tanks, containers, and treatment processes managing waste or recoverable material with a VOHAP concentration equal to or greater than 100 ppmw as determined at the point where the material first enters the facility. For tank emission points, tanks in which the organic HAP vapor pressure of the waste or recoverable material in the tank is equal to or greater than 0.7 kPa are required to use a cover and be vented to a control device that reduces organic HAP emissions by 95 percent (or equivalent floating roof technology). Tanks in which the organic HAP vapor pressure of the waste or recoverable material in the tank is less than 0.7 kPa use a cover without additional controls (i.e., a cover only without being vented to a control device). For container emission points, the regulatory alternative requires use of a cover on each unit and use of submerged fill when wastes or recoverable materials are transferred into containers by pumping. For process vent emission points, the regulatory alternative requires connecting the

process vent to a control device that reduces organic HAP emissions by 95 percent. For land disposal unit emission points, the regulatory alternative requires treatment of the wastes prior to disposal to reduce the waste VOHAP concentration to less than 100 ppmw. For equipment leak emission points, the regulatory alternative requires a implementation of a LDAR program and certain equipment modifications specified under the existing for ancillary equipment handling waste or recoverable material streams with a total organic HAP concentration equal to or greater than 10 percent. The equipment leak requirements are consistent with the existing NSPS process equipment leak standards.

G. Regulatory Alternative Impacts

The EPA developed estimates of the impacts associated with each of the regulatory alternatives for existing sources. As explained in the preceding section, no impacts were estimated for the regulatory alternatives for new sources because of difficulty in projecting the numbers and types of new sources likely to be built over the next 5 years.

1. Overview of Impacts Estimation Methodology

In developing NESHAP and other air standards, the EPA frequently uses a model plant approach for comparing alternative control options. However, for the off-site waste and recovery operations source category, it is difficult to adequately characterize the source category using a selection of several representative model plants because, for many of the facilities in the source category, the quantities and characteristics of wastes and recoverable materials received at the facility are highly variable and can change often (as frequently as on a day-to-day basis). In addition, many different waste management unit and recoverable material reprocessing unit configurations are used at off-site waste and recovery operations facilities to manage these ever changing materials. Consequently, the EPA decided a model plant approach is not appropriate for estimating control option impacts for the off-site waste and recovery operations source category.

Instead of using a model plant approach for the off-site waste and recovery operations source category, the EPA decided to adapt a computer model developed by the Agency to estimate nationwide organic air emission impacts from RCRA hazardous waste treatment, storage, and disposal facilities (TSDF). As explained in section III of this notice, the EPA estimates that approximately 90 percent of the nationwide organic HAP emissions for the off-site waste and recovery operations source category occur from hazardous waste TSDF. Consequently, the EPA considers adapting this computer model to be appropriate for evaluating alternative control options for the off-site waste and recovery operations source category.

The primary sources of site-specific waste data used as input to the computer model are two comprehensive nationwide surveys that the EPA Office of Solid Waste (OSW) conducted in 1987: the National Survey of Hazardous Waste Generators (referred to hereafter as the "GENSUR"); and the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (referred to hereafter as the "TSDR Survey"). These data represent waste quantities, waste compositions, and waste management practices at hazardous waste TSDF in 1986, and are the most recent nationwide TSDF waste data available to the EPA on a consistent, industry-wide basis.

The data base indicates that 710 TSDF received wastes and recoverable materials from off-site waste generators in 1986. The EPA adapted its computer model to simulate the waste management processes reported in the TSDR Survey to be operating at each of these TSDF. Organic HAP emission factors and emission control cost factors are assigned to each waste management process using one (or in many cases a combination of several) of the model units developed for the TSDF RCRA air rule projects. Further details regarding the emission estimation methodology are provided in the BID for this proposed rulemaking.

The EPA is aware that some waste management practices have changed since the data were collected for the GENSUR and TSDR Survey because of new EPA regulations promulgated since 1986 (*e.g.*, the RCRA land disposal restrictions) as well as changes implemented by the waste management industry. To address these changes in the definition of the baseline used for this rulemaking, assumptions were applied in the computer model to better reflect current industry-wide waste management trends (*e.g.*, conversion of surface impoundments to tanks, treatment of certain wastes prior to or as an alternative to land disposal). Additional assumptions were made to simulate the implementation of the different regulatory alternatives in the computer model. These assumptions are described in further detail in the BID for this proposed rulemaking.

2. Regulatory Baseline

For the purpose of evaluating the relative organic emission reduction effectiveness of different regulatory alternatives, the EPA defines a "baseline" as a reference point from which each regulatory alternative can be compared. The baseline represents the estimated level of organic emissions from the source category that would occur in the absence of implementing any of the regulatory alternatives. For the off-site waste and recovery operations source category, the EPA chose a baseline which would reflect the level of organic emissions for each emission point type following implementation of air emission controls required by federally enforceable air regulations in effective as of July 1991. The EPA defined the baseline to consist of the following regulations: (1) RCRA organic air emission standards for TSDF process vents (40 CFR 264 subpart AA and 40 CFR 265 subpart AA); (2) RCRA organic air emission standards for TSDF equipment leaks (40 CFR 264 subpart BB and 40 CFR 265 subpart BB); (3) RCRA land disposal restrictions (40 CFR part 268); and (4) NESHAP for benzene waste operations (40 CFR 61 subpart FF).

3. Organic Emissions Impacts

The EPA estimated organic HAP emission reductions that would be achieved if air rules based on each of the five regulatory alternatives were implemented. Baseline organic HAP emissions are estimated to be approximately 52,000 Mg/yr. The organic HAP emissions assuming implementation of the individual regulatory alternatives are estimated to be approximately: 28,000 Mg/yr for Regulatory Alternative 1, 23,000 Mg/yr for Regulatory Alternative 2, 9,000 Mg/yr for Regulatory Alternative 3, 9,000 Mg/yr for Regulatory Alternative 4, and 8,000 Mg/yr for Regulatory Alternative 5.

4. Other Environmental and Energy Impacts

The primary source of other environmental and energy impacts is expected to result from the operation of control devices used to remove or destroy organics in captured vapor streams. Electric motor-driven fans, blowers, or pumps, depending on the type of control device, are used for operations such as moving the captured organic vapors to the control device, circulating cooling water through a condenser, or pumping recovered liquids to an accumulation tank. Generation of the electricity to operate

the control device often requires burning of fuel in an electric utility power plant which produces air emissions, wastewater discharges, and solid wastes. When carbon adsorption systems are used, the organic HAP removed from the vapor stream are adsorbed on the activated carbon in the control device. Once the carbon becomes saturated with organics, it must be regenerated or disposed of in a landfill. Regeneration of the carbon requires steam. Producing this steam in a boiler creates both secondary air and energy impacts. Disposal of the spent carbon produces a solid waste impact.

5. Control Cost Impacts

Total capital investment (TCI) cost represents the cost to facility owners and operators to purchase and install air emission control equipment. The TCI costs in 1991 dollars to implement each of the regulatory alternatives is estimated to be approximately: $11 million for Regulatory Alternative 1, $14 million for Regulatory Alternative 2, $49 million for Regulatory Alternative 3, $57 million for Regulatory Alternative 4, and $78 million for Regulatory Alternative 5.

Total annual cost represents the total cost to facility owners and operators each year to: Operate and maintain the air emission controls required by the proposed rule; perform the inspection, monitoring, recordkeeping, and reporting required by the proposed rule; and repay the capital investment for the air emission controls. The capital recovery was estimated using an interest rate of 7 percent applied over a period ranging from 10 to 20 years depending on the expected service life for each type of air emission control equipment. The total annual cost to implement each of the regulatory alternatives is estimated to be approximately: $4.7 million per year for Regulatory Alternative 1, $5.2 million per year for Regulatory Alternative 2, $24.5 million per year for Regulatory Alternative 3, $26.1 million per year for Regulatory Alternative 4, and $36.3 million per year for Regulatory Alternative 5.

6. Economic Impact Analysis

The EPA performed an economic impact analysis using a model that simulates 60 separate waste disposal markets and then estimates facility and market responses to the costs of implementing the requirements of the proposed rule. All dollar amounts for prices and costs were adjusted to reflect 1991 dollars. The EPA made no projections of new off-site waste and recovery operations that would be affected by the proposed rule.

Complying with the proposed rule will increase the costs of providing services at off-site waste and recovery operations facilities. The magnitude of the cost increases would vary from facility to facility depending on factors such as the types of wastes or recoverable materials received, the types of waste or recovery operations performed, the number and types of emission points for each of these operations, and the level of emission control already in place at the facility. Cost increases would lead to some price increases, and possibly reduced profits for some firms in the business.

The proposed rule is likely to affect prices charged in almost all of the 60 markets studied, although many markets are likely to experience very small changes or none at all. The most severely affected market (in percentage terms) may experience a price increase in excess of 70 percent. The greatest absolute increase in price would be an increase of $500 per Mg of waste, which would be a 30 percent increase. The greatest decrease in quantity would be 375 Mg of waste. Overall, the quantity of off-site waste managed at the 700-plus facilities in the data base used for the economic impact analysis would decrease by slightly over 1,600 Mg, or about 0.009 percent of the estimated 19 million Mg of waste managed.

The EPA's analysis assumed that owners of affected facilities would respond to this rule by either installing and operating the required air emission control equipment, discontinuing specific individual waste or recovery operations affected by the rule, or closing the entire facility. The EPA projects that although 100 individual waste and recovery operations located at a number of facilities could shut down as a result of this proposed rule, only about 10 entire facilities would close.

A number of decisions made by the EPA regarding the off-site waste and recovery operations NESHAP rulemaking since the completion of the economic impact analysis change the costs to comply with the rule for some individual waste or recovery operations at a particular facility from the costs used for the economic impact analysis. The compliance costs for some of these individual operations would increase while for other individual operations the costs would decrease depending on site-specific factors. However on a facility-wide basis, the EPA expects that the total cost to comply with the requirements of the proposed rule for most of individual off-site waste and recovery operations facilities listed in the data base to be about the same as the total individual facility compliance costs used for the economic impact analysis described above. Thus, the EPA believes that the results of this analysis are representative of the overall economic impacts of the proposed rule.

V. Selection of Basis for Proposed Rule

A. Selection of Regulatory Alternative for Existing Sources

To select one of the five regulatory alternatives to serve as the basis for the proposed standards for existing sources, the EPA evaluated the organic HAP emission reductions, control costs, economic impacts, and other environmental and energy impacts associated with implementing the air emission controls under each regulatory alternative. Based on this evaluation, the EPA selected Regulatory Alternative 3 as the basis for the standards proposed for existing sources.

Regulatory Alternative 1, the MACT floor, is estimated to reduce nationwide organic HAP emissions by approximately 24,000 Mg/yr. Regulatory Alternative 2 is estimated to reduce nationwide organic HAP emissions by approximately 29,000 Mg/yr. Substantially higher organic HAP emission reductions beyond those estimated for Regulatory Alternatives 1 and 2 are estimated to be achieved by either Regulatory Alternative 3, 4, or 5. All three of these regulatory alternatives are estimated to achieve similar levels of organic HAP emission reduction from the regulatory baseline. Nationwide organic HAP emission reductions are estimated to be 43,000 Mg/yr for Regulatory Alternative 3, 43,000 Mg/yr for Regulatory Alternative 4, and 44,000 Mg/yr for Regulatory Alternative 5.

The highest level of nationwide organic HAP emission reduction would be achieved by selecting either Regulatory Alternative 3, 4, or 5 as the basis for the standards for existing sources. The estimated control cost estimates for Regulatory Alternatives 4 and 5 are higher than the estimated costs for Regulatory Alternative 3. Because Regulatory Alternative 3 would provide essentially the same level of nationwide organic HAP emission reduction for a lower cost, Regulatory Alternatives 4 and 5 were eliminated from further consideration as the basis for the proposed standards.

The EPA may set standards that are more stringent than the MACT floor if such standards are achievable considering the cost, environmental, and other impacts listed in CAA section 112(d)(2). Based on the information available to the EPA at this time, the only difference in these cost, environmental, and other impacts that

the EPA can distinguish between Regulatory Alternatives 1, 2, and 3 is related to the estimated nationwide costs of controls required by each of these regulatory alternatives.

The total nationwide annual cost estimated to implement controls under either Regulatory Alternative 1 or 2 is approximately the same ($4.7 million per year for Regulatory Alternative 1 versus $5.2 million per year for Regulatory Alternative 2). The total nationwide annual cost estimated to implement controls under Regulatory Alternative 3 is significantly higher ($24.5 million per year). However, given the additional 19,000 Mg/yr of nationwide organic HAP emission reduction that is estimated to be achieved over Regulatory Alternative 1 and the additional 14,000 Mg/yr of nationwide organic HAP emission reduction that is estimated to be achieved over Regulatory Alternative 2, the EPA concluded that the additional cost of implementing controls under Regulatory Alternative 3 is reasonable and justifiable. Thus, the EPA selected Regulatory Alternative 3 as the basis for the proposed standards for existing sources.

B. Selection of Regulatory Alternative for New Sources

No regulatory alternatives beyond the MACT floor were identified for new sources. Thus, the MACT floor for new sources is the basis for the control requirements proposed for new sources.

C. Selection of Format for Proposed Rule

Section 112 of the CAA requires that emission standards for control of HAP be established unless it is the Administrator's judgement that emission standards cannot be established or enforced for a particular type of source. Formats for emission standards include percent reduction, concentration limits, or a mass emission limit. Section 112(h)(2) identifies two conditions under which it is not feasible to establish an emission standard: (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) if the application of measurement technology to a particular class of sources is not practicable because of technology and economic limitations. In these cases, the EPA may instead establish design, equipment, work practice, or operational standards, or a combination thereof.

The NESHAP proposed today for the off-site waste and recovery operations source category are a combination of emission standards and equipment, design, work practice, and operational standards. Whenever feasible, emission standards have been proposed. However, in some cases, emission limitations would not adequately ensure that the maximum emission reductions required by the standards are achieved. In those cases, a combination of equipment, design, work practice, and operational standards have been determined by the EPA to be equivalent to the emission standards proposed today.

D. Selection of Test Procedures and Compliance Procedures

Under the proposed rule, determination of the VOHAP concentration would not be required for materials placed in units that use air emission controls in accordance with the requirements of the rule. To determine whether a particular waste or recoverable material may be placed in a unit subject to the rule but not using the required air emission controls, the owner or operator would be required to conduct initial and periodic determinations of the material VOHAP concentration. The proposed rule would allow the owner or operator to directly measure the VOHAP concentration by analyzing samples of the material or to use knowledge of the waste or recoverable material.

E. Selection of Monitoring and Inspection Requirements

1. Air Emission Control Equipment

Control devices used to comply with the proposed percent reduction or concentration limit need to be properly operated and maintained if the standards are to be achieved on a long term basis. Continuous monitoring of the control device operation provides a means to help ensure that the control device remains in compliance with the applicable emission standard. The EPA considered two monitoring options for this NESHAP; (1) the use of continuous emissions monitoring (CEM) systems; and (2) the use of monitors that measure operating parameters which can be directly related to the emission control performance of a particular control device.

The organic HAP emissions from off-site waste and recovery operations which would be vented to control devices under this NESHAP typically are not composed of a single or a few specific organic HAP chemicals. Rather, these emissions are more likely to be composed of a mixture of many different organic HAP chemicals because of the varying compositions of the wastes or recoverable materials received at off-site waste and recovery operations facilities. As a general rule, CEM systems that uses gas chromatography to measure individual gaseous organic HAP compound chemicals are not practical for applications where the number of organic HAP chemicals to be monitored exceeds five (see proposed PS 101 and 102, Appendix A of 40 CFR part 64, October 22, 1993 at 58 FR 54648). Therefore for many off-site waste and recovery operations applications, a CEM system is not currently commercially available which can measure total organic HAP for the specific set of organic HAP chemicals selected for regulation under the off-site waste and recovery operations NESHAP.

A possible alternative would be to use a CEM system to measure total VOC or total hydrocarbons (THC) as surrogate for total organic HAP. However, the EPA concluded that requiring monitoring based on this alternative is not appropriate for this rulemaking. Current CEM systems that measure VOC emissions operate by flame ionization detection (FID), photoionization detection (PID), non-dispersive infrared (NDIR) absorption, or other detection principles that respond to VOC levels. These CEM systems provide a measure of the relative concentration level of a mixture of organic chemicals, rather than a quantification of the organic species present (*i.e.*, the total VOC measurement device will have a different instrument response for different organic chemicals). While CEM systems would provide an adequate measure of compliance, monitoring control device operating parameters (as described below) is common practice and provides at least an equivalent measure of control device performance.

Based on the reasons explained above, the EPA rejected requiring the use of CEM systems for the off-site waste and recovery operations NESHAP. Instead, the EPA selected monitoring of control device operating parameters indicative of air emission control performance as the most appropriate approach to monitoring for the off-site waste and recovery operations NESHAP source category. However, the proposed rule would not preclude owners or operators choosing to use a CEM system to comply with the rule's monitoring requirements for those cases where it is possible to do so.

The proposed off-site waste and recovery operations NESHAP specifies the types of parameters that can be monitored for common types of control devices. These parameters were selected because they are good indicators of control device performance and

instrumentation is available at a reasonable cost to monitor these parameters continuously. The proposed rule also would provide provisions under which an owner or operator could be approved, on a case-by-case basis, to monitor parameters not specifically listed in the rule.

Under the proposed rule, each individual owner or operator would establish on a site-specific basis minimum or maximum operating parameter values, as appropriate for the type of parameter monitored, that the control device must not exceed to remain in compliance with the emission standards. These site-specific operating parameter values could be established through either performance tests, control device design analysis, or manufacturer's recommendations. The established operating parameter values for each control device would be incorporated in the operating permit issued for a facility (or, in the absence of an operating permit, the established levels would be directly enforceable) and would be used to determine a facility's compliance status. Excursions outside the established operating parameter values would be considered violations of the applicable emission standard except when the excursion is caused by a startup, shutdown, or malfunction that meets the criteria specified in the Part 63 general provisions (40 CFR 63 subpart A).

The proposed NESHAP does not require monitoring of any of the following boilers or process heaters when used as a control device to comply with the requirements of the rule: (1) Boilers and process heaters with a heat capacity equal to or greater than 44 megawatts (approximately 150 million Btu/hr); (2) boilers or process heaters with a heat capacity less than 44 MW that introduces the vent stream as a primary fuel or mixes it with the primary fuel; or (3) boilers or process heaters with a heat capacity less than 44 MW that introduces the vent stream through the same burner. The EPA concluded that the specific range of temperatures and residence times for these types of combustion units which facility operators must continuously maintain to meet their facility process heat or steam demands will ensure compliance with the control device standards without the need for monitoring.

Continuous monitoring is not feasible for those emission points required to comply with certain equipment standards and work practice standards (*e.g.*, tanks equipped with only covers, pumps and valves subject to LDAR programs). In such cases, failure to install and maintain the required equipment or properly implement the LDAR program would constitute a violation of the applicable equipment or work practice standard.

The EPA request comments on the proposed approach for determination of control device compliance based on continuous operating parameter monitoring.

2. Treatment Processes

Under the proposed off-site waste and recovery operations NESHAP, wastes or recoverable materials having VOHAP concentrations of 100 ppmw or more must be treated to remove or destroy organic HAP in accordance with standards specified in the rule before the material can be placed in certain management units. Like the control devices used for organic HAP emission control, the treatment processes used to comply with these standards (i.e., minimum percent HAP reduction, VOHAP concentration limits, required HAP mass removal levels) need to be properly operated and maintained if the standards are to be achieved on a long-term basis. Therefore, the EPA is proposing to require monitoring of operating parameters for the treatment processes used to comply with the rule requirements.

Analogous to the monitoring approach that the EPA is proposing for control devices, the EPA would prefer that each owner or operator establish on a site-specific basis minimum or maximum operating parameter values, as appropriate, for the treatment process that the owner or operator must not exceed to remain in compliance with the standards. To implement this approach for treatment processes, monitoring methods are needed that will be sufficiently representative, accurate, precise, reliable, frequent, and timely to determine whether a deviation occurs and therefore to certify whether compliance is continuous or intermittent. The EPA has identified for some types of treatment process, such as steam stripping, operating parameters that can be continuously monitored and recorded which directly relate to the treatment process performance. The EPA requests comments on establishing monitoring requirements for treatment processes that can be used to determine compliance with the proposed standards based on continuous operating parameter monitoring. The EPA further requests comment on establishing an option within the regulation for specific default values for treatment process operating parameters, in the event that owners or operators would rather not establish their own minimum or maximum operating parameter values.

F. Selection of Recordkeeping and Reporting Requirements

Under CAA section 114(a), the EPA may require any owner or operator of a source subject to a NESHAP to establish and maintain records as well as prepare and submit notifications and reports to the EPA. General recordkeeping and reporting requirements for all NESHAP are specified in the Part 63 general provisions (40 CFR 63.9 and 40 CFR 63.10). All recordkeeping and reporting requirements were selected for the off-site waste and recovery operations NESHAP to be consistent with these Part 63 general provisions requirements.

G. Emissions Averaging

Emissions averaging is an approach used by the EPA for certain other NESHAP rulemakings when the average level of emissions from individual facilities in the source category remains relatively predictable over extended periods of time. Application of this approach allows a facility owner or operator to obtain emission credits by reducing emissions from specific emission points at the facility to a level less than that required by the rule. These emission credits can then be used to offset emission debits created at those emission points at the facility that are not controlled to the level required by the rule. Under the EPA's emissions averaging policy, a facility owner or operator must demonstrate that the overall emissions average determined for the facility will not result in greater risk or hazard to human health or the environment than would occur by complying with the rule requirements at each individual emission point.

During the development of the proposed rule for the off-site waste and recovery operations source category, the EPA considered including an emissions averaging approach. However, the statutory requirements of the CAA do not allow emissions averaging between different sources. As explained in section II.D of this notice, the EPA is proposing the source for the off-site waste and recovery operations NESHAP to be each emission point type (e.g., each tank, container). Thus, using a facility-wide emissions averaging approach (i.e., establishing a single average organic HAP emission level for the entire facility) is not appropriate for the off-site waste and recovery operations NESHAP.

Furthermore, independent of the definition of source that the EPA selects for this rulemaking, the nature of day-to-day operations at off-site waste and

recovery operations facilities complicates and discourages the application of an emissions averaging approach to this NESHAP. At an off-site waste and recovery operations facility, wastes or recoverable materials are often received from many different generators. The quantities of materials received from these generators can vary from very small amounts (*e.g.*, a single 55-gallon drum of a particular waste or recoverable material) to very large amounts (*e.g.*, multiple truck or railcar loads of a single material type). Consequently, the quantities of waste or recoverable material received as well as the compositions and concentrations of organic HAP in these materials are constantly changing over short periods of time (*i.e.*, daily, weekly). On a given day an off-site waste and recovery operations facility can receive wastes or recoverable materials from one group of generators and the next day the facility can receive new wastes or recoverable materials from a completely different group of generators. Because of this operating mode, it is difficult to predict the quantities and organic HAP characteristics of the waste or recoverable materials that will be received at an off-site waste and recovery operations facility over a future period of time. Thus, operating the off-site waste and recovery operations facility so not to exceed a specific overall average organic HAP emissions level would require the owner or operator to rigorously monitor and regulate the flow of wastes and recoverable materials into the facility throughout the entire averaging period used to determine the specified average emissions limit. This would require sampling each load of incoming material, updating the emissions averaging calculations, and possibly restricting quantities of waste or recoverable material with certain organic HAP compositions that enter the facility during the remainder of the averaging period to ensure the facility does not exceed the specific average organic HAP emissions limit. The EPA believes this would be a complex and resource intensive task for off-site waste and recovery operations facility owners and operators to implement and for regulatory agency personnel to monitor and enforce.

The EPA decided not to allow emissions averaging in the proposed rule for the off-site waste and recovery operations source category because such an approach is not appropriate for this source category. The EPA requests comments on the feasibility of applying emissions averaging to the off-site waste and recovery operations source category and requests information and data that would be necessary to support development and implementation of an emissions averaging approach.

VI. Rule Implementation

A. Effective Date for Compliance

In accordance with CAA section 112(i)(3), owners and operators of existing sources would be required to comply with the requirements of this NESHAP within 3 years after promulgation of the rule unless a compliance extension is granted to a particular source. Owners and operators of sources that begin operation on or after October 13, 1994 would be required to comply with all provisions of the NESHAP upon startup.

B. Modifications and Reconstruction

Owners and operators of newly constructed or reconstructed off-site waste and recovery operations must comply with the requirements specified in the Part 63 general provisions (40 CFR 63.5). For modified sources, the EPA has proposed guidance under the authority of CAA section 112(g) (refer to 59 FR 15504, April 1, 1994). The EPA anticipates that the final promulgated guidance will apply to off-site waste and recovery operations.

C. Relationship to Title V Operating Permit Program

Under title V of the CAA, the EPA has established a program the requires all owners and operators of HAP-emitting sources to obtain an operating permit (57 FR 32251, July 21, 1992). The EPA's operating permit program establishes a single document that includes all of the requirements which pertain to a single source. Each permit will contain federally enforceable conditions with which the source owner and operator must comply. Under this program, all applicable requirements of the off-site waste and recovery operations NESHAP would ultimately be included in a source's title V operating permit.

State operating permit programs must be approved by the EPA. Once a State's permit program has been approved, each off-site waste and recovery operations facility within that State must apply for and obtain an operating permit. If the State where the facility is located does not have an approved permitting program, the owner or operator of a facility must submit the application to the EPA Regional office in accordance with the requirements of the Part 63 general provisions (40 CFR 63 subpart A).

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rule in accordance with CAA section 307(d)(5). Persons wishing to make an oral presentation regarding the proposed off-site waste and recovery operations NESHAP should contact the EPA contact person listed in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be sent the attention of Docket No. A–92–16 at EPA's Air and Radiation Docket and Information Center (see **ADDRESSES** section of this notice).

A verbatim transcript of the hearing and written comments received by the EPA regarding the proposed off-site waste and recovery operations NESHAP will be placed in Docket No. A–92–16.

B. Docket

The docket is an organized and complete file of information considered by the EPA in the development of a rulemaking. The docket pertaining to the off-site waste and recovery operations NESHAP is Docket No. A–92–16. This docket contains a copy of the regulatory text of the proposed rule, the BID, and copies of all BID references and other information related to the development of this proposed rule. The public may review all materials in this docket at the EPA's Air and Radiation Docket and Information Center (see the **ADDRESSES** section at the beginning of this notice).

C. Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) imposes procedural requirements on the development of significant regulatory actions. The EPA must therefore determine whether a regulatory action is significant. The Executive Order defines a significant regulatory action as one that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, users 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.

Pursuant to the terms of the Executive Order 12866, it has been determined that this action will be treated as a "significant regulatory action" within the meaning of the Executive Order. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations are documented in the docket pertaining to the off-site waste and recovery operations NESHAP rulemaking (Docket No. A–92–16).

D. Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the Regulatory Flexibility Act is to keep paperwork and regulatory requirements from being out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the Clean Air Act.

A small business with establishments in Standard Industrial Classification 4953, Refuse Systems, is defined by the Small Business Administration as one receiving less than $6 million per year, averaged over the most recent three fiscal years. A small organization is a not-for-profit enterprise that is independently owned and operated and is not dominant in the waste disposal industry. A small government is one that serves a population of less than 50,000 people. The EPA may use other definitions, but elects to use these. The EPA believes that small organizations and small governments have at most a very minor involvement with the types of off-site waste and recovery operations subject to this rulemaking, and therefore would not be significantly affected by the off-site waste and recovery operations NESHAP. Hence, the EPA has concentrated its attention on small businesses.

The Regulatory Flexibility Act specifies that Federal agencies must prepare an initial regulatory flexibility analysis if a proposed regulatory action would have a significant economic impact on a substantial number of small entities. The data bases available to the EPA reflect the state of the hazardous waste TSDF industry in 1986, and provide limited basis for updating the economic factors. Furthermore, the EPA does not have reliable projections of construction of new facilities with off-site waste and recovery operations that would be subject to the proposed rule. The EPA therefore assumes the proposed rule may have a significant impact on a substantial number of small businesses, and has conducted a regulatory flexibility analysis. This analysis is part of the economic impact analysis (titled Economic Impact Analysis of Proposed National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations) prepared for the rulemaking and available in the docket (Docket No. A–92–16).

Even though many off-site waste and recovery operations facilities are expected to be area sources and would not be subject to the proposed NESHAP, the EPA assumed for the regulatory flexibility analysis that all facilities listed in the data base are colocated at major sources. Also, the analysis did not exclude those off-site waste and recovery operations facilities that would not be subject to the NESHAP under the proposed applicability exemption for facilities at which the total annual organic HAP mass content of all wastes and recoverable materials subject to the rule entering the facility is less than 1 Mg/yr. From its data base, the EPA has identified 110 small businesses that own 112 affected facilities. About 90 of these small businesses would incur compliance costs associated with using air emission control equipment. For about one-third of the 90 businesses, the annual compliance costs would exceed 5 percent of normal production or waste treatment costs. For the median small business, the same costs come to less than 0.4 percent of sales " compared with about 0.01 percent for the median large business. Excluding the costs of monitoring and recordkeeping costs, the capital costs would exceed the retained earnings breakpoints (the maximum amount of new capital a business can raise without issuing new stock and without changing its existing capital structure) of about 40 percent of the 90 small businesses. Only about 30 percent of large businesses would have capital costs of compliance exceeding their breakpoints.

Finally, the EPA evaluated the possibility that the proposed rule might cause a small business to close. Although the rule may cause specific waste treatment processes to be shut down at many off-site waste and recovery operations facilities, only about 10 facilities are projected to close outright. Of these, the EPA can single out only three small businesses, each of which has only one facility. Limiting the analysis, to the extent possible with the information available in the data base, to only those facilities which are major sources and would not qualify for the 1 Mg of HAP applicability exemption does not change this number of potential closures.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this rule may have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The information collection requirements for the proposed NESHAP have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1717.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740.

The public recordkeeping and reporting burden for this collection of information is estimated to average 1,200 hours per respondent the first year following promulgation of the rule. Thereafter, the recordkeeping and reporting burden is estimated to average 700 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the recordkeeping and reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Review

The off-site waste and recovery operations NESHAP would be reviewed 8 years from the date of promulgation. This review would include an assessment of such factors as evaluation of the residual health risks, any duplication with other air programs, the existence of alternative methods, enforceability, improvements in air emission control technology and health

data, and the recordkeeping and reporting requirements.

VIII. Statutory Authority

The statutory authority for this proposal is provided by section 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42. U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Containers, Hazardous air pollutants, Off-site waste and recovery operations, Land disposal units, Process vents, Recoverable materials, Tanks, Surface impoundments, Waste.

Dated: September 30, 1994.

Carol M. Browner,

The Administrator.

[FR Doc. 94–25064 Filed 10–12–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5089–6]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Olmsted County Landfill Site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (USEPA) Region V announces its intent to delete the Olmsted County Landfill 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 Contingency Plan (NCP), which USEPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by USEPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and USEPA, in consultation with the State of Minnesota, has determined that no further response is appropriate. Moreover, USEPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before November 14, 1994.

ADDRESSES: Comments may be mailed to Ramon Torres (HSRM–6J) Remedial Project Manager or Gladys Beard (HSRM–6J) Associate Remedial Project Manager, Office of Superfund, USEPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604. Comprehensive information on the site is available at USEPA's Region V office and at the local information repository located at: Rochester Public Library, 11 First Street, SE., Rochester MN 55904. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), USEPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Ramon Torres (HSRM–6J) Remedial Project Manager or Gladys Beard (HSRM–6J) Associate Remedial Project Manager, Office of Superfund, USEPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Derrick Kimbrough (P–19J), Office of Public Affairs, USEPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–9749.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency (EPA) Region V announces its intent to delete the Olmsted County Sanitary Landfill Site from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the deletion. The EPA identifies Sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those Sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The USEPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register.**

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

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

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete Sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, USEPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, USEPA may formally begin deletion procedures once the State has concurred with the intent to delete. This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on USEPA's intention to delete the site from the NPL. All critical documents needed to evaluate USEPA's decision are generally included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the USEPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the USEPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If USEPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register.**

IV. Basis for Intended Site Deletion

The Olmsted County Landfill is located in the Oronoco Township just

east of State Highway 52 about three miles north of Rochester's city limits. The Minnesota Pollution Control Agency issued the landfill's operating permit to the City of Rochester in 1970, and amended it in 1972, 1979 and 1984. In late 1982 the city transferred ownership of the landfill to Olmsted County. The facility's permitted boundary encompasses 304 acres. The county stopped sending municipal wastes to the landfill in 1987, but one cell continued to be used for demolition debris and coal ash from Rochester Public Utilities until March 1993. The county has now officially ceased using the landfill. It has been permanently covered, and the landfill was certified closed by the Minnesota Pollution Control Agency in December 1993.

Beginning in 1983, monitoring wells on the Site showed groundwater beneath the landfill was being contaminated with volatile organic compounds (VOCs) that are typically found at landfills. The landfill was added to the Permanent List of Priorities (the Minnesota Superfund list) in 1984, and in 1986 the USEPA placed it on the National Priorities List (Federal Superfund list), 51 FR 21054–21112. Under a cooperative agreement with the USEPA, the MPCA assumed management of Superfund activities at the Site. The MPCA issued a Request for Response Action in 1989 directing the city and the county to investigate the nature and extent of the contamination. Olmsted County has taken the lead in funding and conducting the investigation.

The Remedial Investigation (RI) of the Olmsted County Landfill Site included an ongoing dye-trace study to determine the direction and rate of groundwater flow in the vicinity of the landfill. Ambient air and landfill gas samples were characterized, along with ground- and surface-water samples.

Numerous field investigations were conducted over a 13-month period. The RI was completed in July 1992. The supplemental RI, which was completed in September 1993, was conducted in order to further investigate gas emissions at the site.

Based on the findings in the Remedial Investigation and the Supplemental Remedial Investigation, further response under CERCLA is not necessary. The low potential for Site impacts will be adequately addressed under the Minnesota Solid Waste Rules for landfills. The continued monitoring, long-term care and contingency actions are specified in a Closure Order and Post Closure Care Plan issued to the County on March 22, 1994, by the MPCA. Continued monitoring to insure compliance with Minnesota Solid Waste Rules will adequately protect human health and the environment. Annual reviews of the data collected are a current requirement under the Rules.

On June 21, 1994, a Record of Decision was signed that concludes no remedial action under CERCLA is necessary at the Site. The selected no-action remedial alternative was chosen in accordance with CERCLA.

EPA, with concurrence of the State of Minnesota, has determined that all appropriate Fund-financed responses under CERCLA at the Olmsted County Landfill site have been completed, and no further Superfund response is appropriate in order to provide protection of human health and the environment.

Dated: September 29, 1994.

Valdas V. Adamkus,

Regional Administrator, USEPA, Region V.

[FR Doc. 94–25194 Filed 10–12–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 92–266 and 93–215, FCC 94–234]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This further notice of proposed rulemaking is one segment of the Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking in this proceeding. The final rules adopted in this decision may be found elsewhere in this issue. In the Further Notice Proposed Rulemaking, the Commission sought comment on possible alternative definitions for small cable operators, independent small cable systems, and small cable systems owned by small multiple system operators. The Commission also sought comment on whether to retain current definitions or use different definitions for purposes of establishing special rate or administrative treatment for small operators and small multiple system operators. The Commission specifically seeks comment on these issues in light of Section 3(a) of the Small Business Act, and on whether the Commission should employ the current Small Business Administration definition of a small cable company in the cable rules. A change in the definitions of these categories of cable operators may affect eligibility under any final rules which the Commission may adopt pertaining to small cable systems.

DATES: Comments are due on or before November 16, 1994 and reply comments are due on or before December 16, 1994

ADDRESSES: Comments and reply comments should be sent to Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Cosentino, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is the proposed rules segment of the Commission's Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking in MM Docket No. 92–266 and MM Docket No. 93–215, FCC 94–234, adopted September 12, 1994 and released September 26, 1994. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Further Notice of Proposed Rulemaking

Background

In 1992, Congress amended § 3(a) of the Small Business Act to require federal agencies to use small business definitions created by the Small Business Administration ("SBA"), or in the alternative, seek public comment on different definitions and obtain the approval of the Small Business Administrator with regard to any regulation applicable to small businesses, unless other statutory definitions are applicable. SBA rules currently define a small cable company as one with $11 million or less in gross revenues. The Cable Television Consumer Protection and Competition Act of 1992 defined a small cable system as one with 1,000 or fewer subscribers. A small cable operator is defined as one with 15,000 or fewer subscribers that is not affiliated with a larger operator. In addition, a small multiple system operator ("MSO") is one serving 250,000 or fewer total subscribers that owns only systems with less than 10,000 subscribers each and has an average system size of 1,000 or fewer subscribers. In this rulemaking, the SBA's Office of Advocacy and the Small Cable Business Association have expressed concern about the Commission's definitions of small operators eligible for transition relief

and our definition of small MSOs. Specifically, the SBA's Office of Advocacy and the Small Cable Business Association believe the current definitions in our rules defining eligibility for transition and administrative relief are under inclusive and were promulgated in violation of § 3(a) of the Small Business Act. They urge us to re-evaluate the definitions and seek public input before deciding on permanent standards.

The Chief Counsel of the SBA's Office of Advocacy has urged the Commission to explore a full range of burden-reducing regulatory options in our rate proceedings. We are in full agreement with that suggestion. Based on the existing record, however, we are not persuaded that the actions taken to date to ease the regulatory difficulties faced by smaller operators have been undertaken in violation of the law. Specifically, the Commission does not believe that Small Business Administration size standards, to which federal agencies may be required to adhere under Section 3 of the Small Business Act, are applicable to the Commission's definitions of small cable operators and small cable systems developed in the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking MM Docket No. 92–266. For example, Section 3(a) of the Small Business Act provides that SBA size standards apply for the purposes of all legislation, unless the legislation specifically authorizes different size standards. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") in fact contains a size definition of a small system as one with 1,000 or fewer subscribers. See 47 U.S.C. § 543(i). Specifically, the statute requires the Commission to develop cable rate regulations that reduce cost and administrative burdens for such "small systems." Given the statute's small system definition of 1,000 or fewer subscribers, Section 3(a) of the Small Business Act is inapplicable. The Commission has implemented the statutory provision regarding small system relief in a more flexible manner than is explicitly mandated by the 1992 Cable Act and is now considering further flexibility through extending relief to additional systems. But this does not alter the fact that the Commission is implementing a statute with an explicit small business standard. Additionally, the Small Business Act defines small-business concerns as one "which is not dominant in its field of operation." 15 U.S.C. § 632(a)(1). Cable systems subject to rate regulation, regardless of whether they are large or small, are by definition dominant in their field of operation because they do not face effective competition. Thus, Section 3(a) of the Small Business Act also does not apply because regulated cable systems do not meet the definition of a small business concern.

Discussion

We established transition treatment for small operators pending completion of our cost studies, and have established administrative relief for independent small systems and small systems owned by small multiple system operators ("MSOs"). Under our interim cost-of-service rules, independent small systems and small systems owned by small MSOs also may use special forms for cost-of-service showings. When cost studies are completed, we may make permanent, eliminate, or modify our transition rate treatment of small operators. When we develop average equipment cost schedules, we may terminate or modify our provisions for streamlined rate reductions for independent small systems and small systems owned by small MSOs. In our final cost proceeding, we may modify our requirements for cost showings by independent small systems and small systems owned by small MSOs.

We believe that it would establish a more complete record for purposes of promulgating final rate rules applicable to small operators, independent small systems, and small systems owned by small MSOs if we obtain comment on possible alternative definitions that we could use for purposes of determining eligibility for special rate or administrative treatment provisions that could apply to small businesses. We are initiating the instant Further Notice of Proposed Rulemaking for purposes of obtaining this comment.

Accordingly, we solicit comment on whether we should retain current definitions or use different definitions for purposes of establishing special rate or administrative treatment for small operators and small MSOs that could be small businesses. We specifically seek comment on these issues in light of Section 3(a) of the Small Business Act, and on whether we should employ the current SBA definition of a small cable company in our cable rules.

Administrative Matters

Initial Regulatory Flexibility Analysis

Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981).

Reason for action. The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rates of cable systems subject to effective competition, as defined in the Cable Act of 1992 and represented in the revised benchmark formula. This Notice proposes to review and determine appropriate definitions of small systems, small operators, and small MSOs for the purpose of determining rate regulation applicable to these categories of companies.

Objectives. To propose rules to implement Section 3 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

Legal Basis. Action as proposed for this rulemaking is contained in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

Description, potential impact and number of small entities affected. We anticipate a possible impact on small entities because the Notice addresses the definitions of small systems, small operators and small MSOs for use in determining rate rules affecting these classes of cable operators.

Reporting, recordkeeping and other compliance requirements. None.

Federal rules which overlap, duplicate or conflict with this rule. None.

Any significant alternatives minimizing impact on small entities and consistent with stated objectives. None.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirements on the public.

Procedural Provisions

Ex parte Rules—Non Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 16, 1993 and reply comments on or before December 16, 1994. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copes. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW., Washington DC 20554.

Ordering Clauses

Authority for this Further Notice of Proposed Rulemaking is contained in sections 4(i), U.S.C. 154(i), 154(j), 303(r), 532(c) and 543.

It is ordered That, pursuant to Sections 4(i), 4(j), 303(r), 612(c), 622(c) and 623 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 303(r), 532(c), 542(c), and 543, *Notice is hereby given* of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this Further Notice of Proposed Rulemaking, and that *Comment is Sought* regarding such proposals, discussion, and statement of issues.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–25022 Filed 10–12–94; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827 and 1852

[NFS Case 940013]

RIN 2700–AB72

NASA FAR Supplement; Assignment of Copyright in Software

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This is a revision of the NASA FAR Supplement (NFS), to allow the Contracting Officer to direct the Contractor to establish claim to copyright in computer software and assign the copyright to the Government or another party. Assignment to the Government can only be directed when the Contractor has not previously been granted permission to establish copyright on its own behalf. This is needed because existing contract clauses do not provide this authority for some types of contracts.

DATES: Comments are due on or before December 12, 1994.

ADDRESSES: Comments should be addressed to: National Aeronautics and Space Administration, Acquisition Liaison Division (Code HP/Beck), Washington, DC 20546. Please cite HP number 940013 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Nina Lawrence, (202) 358–2424, or David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

A. Background

FAR clause 52.227–14, Rights in Data—General, as modified by the NASA FAR Supplement (NFS), currently allows contractors to establish copyright in software developed under the contract. The clause also currently requires contractors to obtain the Contracting Officer's permission prior to exercising this right. This revision will not restrict this right. However, if a contractor is not interested in obtaining copyright, or developing the software, and is unwilling to assign the copyright to NASA or its designee, no copyright can be claimed for the software. In many, if not most, cases this does not matter. However, in some situations where further development of software is needed before the software can be marketed, the U.S. private sector may be unwilling to invest in developing and marketing the software without the availability of copyright protection. This revision will provide authority to acquire assignments of copyright in such situations.

It is NASA's intent to announce to the public the availability of licensable software and the criteria which will be utilized in selecting licensees. Exclusive and partially exclusive licenses will be granted only after public notice and opportunity to file written objections.

FAR 27.404(g)(3) authorizes agencies to include contractual requirements to assign copyright to the Government or another party. The FAR further directs that any such requirements established by agencies should be added to clause 52.227–14, Right in Data—General. This authority is the same as is presently contained in FAR clause 52.227–17, Rights in Data—Special Works. That clause is specifically tailored for acquisitions where data is the main deliverable; it lacks many elements necessary in contracts involving a mix of deliverables. The proposed revision will result in a clause that more appropriately addresses NASA's needs in acquisitions involving mixed deliverables. Further, with the increased emphasis in recent years on promoting U.S. competitiveness and the commercialization of Government-generated technology, it is important that we take steps to protect computer software that has a significant technology transfer value. The availability of copyright protection will enable NASA to enhance U.S. competitiveness and more effectively transfer valuable computer software technology.

This revision does not apply to or affect contracts for basic or applied research with a university or college (see NFS 1827.404(e)(1) or 1827.409(e)).

B. Executive Order 12866

The Office of Information and Regulatory Affairs has determined that this rule is significant under E.O. 12866. This regulation is needed on an urgent and compelling basis because valuable computer software developed under NASA contracts may become part of the public domain, and thereby lose its value, if the software is not copyrighted. Current regulations grant the contractor the right to request permission to establish copyright, but there is no procedure to force the contractor to exercise that right or to transfer the

copyright to the Government. The regulation meets the need, i.e., provides protection for the software's value, by allowing NASA to direct the contractor to establish copyright and assign the copyright to NASA or another party. The potential costs for this regulatory action are limited to the nominal costs involved in establishing and transferring copyright. These costs may vary, but are estimated to be less than $100 per copyright, and it is anticipated that less than 10 contractors annually would each be required to incur this expense one time. Because the contracts under which valuable software is likely to be developed are usually cost-reimbursable research and development contracts, the costs for copyright and transfer would normally be charged to the Government. The potential benefits are the value of the protected software; this value cannot be measured, as it depends on future discoveries and developments. This value cannot be considered to be taken away from contractors, because it never belonged to them.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any new recordkeeping or information collection requirements, or new collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1827 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1827 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1827 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

2. In § 1827.404, paragraph (e)(1) is revised and paragraph (e)(4) is added to read as follows:

1827.404 Basic rights in data clause.

* * * * *

(e) * * *

(1) Subparagraph (3) (see 1827.409(e) and 1852.227–14) is to be added to paragraph (d) of the clause at (FAR) 48 CFR 52.227–14, Rights in Data—General, whenever that clause is used in any contract other than one for basic or applied research with a university or college. Paragraph (d)(3)(i) of the clause provides that the contractor may not establish claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. This is in accordance with NASA policy and procedures for the distribution of computer software developed by NASA and its contractors, as set forth in NASA Management Instruction 2210.2 and NASA Handbook 2200.2, NASA Scientific and Technical Information Handbook.

* * * * *

(4) If the contractor has not been granted permission to copyright in accordance with paragraphs (e)(1) and (e)(2) of this section, paragraph (d)(3)(ii) of the clause at (FAR) 48 CFR 52.227–14, Rights in Data—General (as modified by 1852.227–14), enables NASA to direct the contractor to establish claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The Contracting Officer may, in consultation with the installation patent or intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of agency mission objectives, needed to support specific agency programs, or necessary to meet statutory requirements.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

(3) In section 1852.227–14, paragraph (3) is redesignated as paragraph (3)(i) and a new paragraph (3)(ii) is added as follows:

1852.227–14 Rights in Data—General.

* * * * *

(3)(i) * * *

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

[FR Doc. 94–25247 Filed 10–12–94; 8:45 am]

BILLING CODE 7510–01–M

Notices

Federal Register
Vol. 59, No. 197
Thursday, October 13, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget October 7, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

- National Agricultural Statistics Service

Farm Injury Survey
Annually
Farms; 13,440 responses; 4,480 hours
Larry Gambrell (202) 720–5778

Extension

- Food and Nutrition Service

Issuance Reconciliation Report
FNS–46
Monthly
State or local governments; 5,340 responses; 42,720 hours
David Walters (703) 305–2385

- Rural Development Administration

Agricultural Cooperative Service Questionnaire: New Cooperative Volume and Structure (Producer Survey for New Cooperative Activity)
On occasion
Farms; Businesses or other for-profit; Small businesses or organizations; 245 responses; 245 hours
Jack Holston (202) 720–9736

Reinstatement

- Animal and Plant Health Inspection Service

Title 9, Code of Federal Regulations, Parts 50, 51, 53, 54, 71, 76, and 78—Cooperative Agreements
VS 1–23, 4–1, 4–1D, 4–6, 4–59, 4–108, 4–108A, 4–108B, 4–108C
On occasion
State or local governments; Farms; 7,010,494 responses; 58,669 hours
Dr. James P. Davis (301) 436–7707

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 94–25369 Filed 10–12–94; 8:45 am]
BILLING CODE 3410–01–M

Type and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, In Fiscal Year 1995

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Mary T. Chambliss, Director, CCC Program Support Division, Office of the General Sales Manager, FAS, USDA, (202) 720–3573.

Determination

I have determined that no eligible agricultural commodities are available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1995. However, I have directed appropriate agencies to continue monitoring stocks and that if adequate supplies become available during the year this determination will be revised.

Done at Washington, D.C., this 5th day of October, 1994.

Mike Espy,
Secretary of Agriculture.

[FR Doc. 94–25245 Filed 10–12–94; 8:45 am]
BILLING CODE 3410–10–M

Forest Service

Addition of Lands to the Ouachita Purchase Unit

AGENCY: Forest Service, USDA.
ACTION: Notice of addition of lands to Ouachita Purchase Unit.

SUMMARY: On September 2, 1994, the Deputy Assistant Secretary, Natural Resources and Environment added lands to the Ouachita Purchase Unit. These additional lands comprise 480 acres, more or less, within Garland County, Arkansas. A copy of the Secretary's establishment document which includes the legal description of the lands within the addition appears at the end of this notice.

EFFECTIVE DATE: The effective date of this addition was September 2, 1994.

ADDRESSES: A copy of the map showing the addition is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090 (202) 205–1248.

Dated: October 3, 1994.

Sterling J. Wilcox,
Acting Associate Deputy Chief.

Proposed Addition to Ouachita Purchase Unit, Garland County, Arkansas

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949), the following lands are being added to the Ouachita Purchase Unit:

Lands lying in Township 1 South, Range 20 West, Garland County, Fifth Principal Meridian, Arkansas, and more particularly described as:

T1S, R20W

Section 16: S½ containing 320.00 acres, more or less.
Section 17: SE¼ containing 160.00 acres, more or less.

Containing a total of 480.00 acres, more or less, and being adjacent to the present Ouachita National Forest boundary.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: September 2, 1994.

Adela Backiel,

Deputy Assistant Secretary, Natural Resources and Environment.

[FR Doc. 94–25366 Filed 10–12–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely request, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 1995.

	Period to be reviewed
Antidumping duty proceedings	
Argentina:	
Silicon Metal	
12A–357–804	
Electrometalurgica Andina, S.A.I.C. Silarsa, S.A.	09/01/93–08/31/94
Canada:	
Steel Jacks	
A–122–006	
Seeburn New-Form Manufacturing Co., Ltd.	09/01/93–08/31/94
Russia:	
Titanium Sponge	
A–821–803	
BPI, Inc.*	08/01/93–07/31/94
*This firm was omitted from the September 16, 1994 initiation notice.	
Taiwan:	
Chrome-Plated Lug Nuts	
A–583–810	
Anmax Industrial Co., Ltd., Buxton International, Chu Fong Metallic Electric Co., Everspring Plastic Corp., Gingen Metal Corp., Goldwinate Associates, Inc., Gourmet Equipment (Taiwan) Corp., Hwen Hsin Enterprises Co., Kwan How Enterprises Co., Kwan Ta Enterprises Co., Kuang Hong Industries, Ltd., Multigrand Industries, Inc., San Chien Electric Industrial Works, San Shing Hardware Works Co., Transcend International Co., Trade Union International Inc./Top Line, Uniauto, Inc., Wing Tang Electrical Manufacturing Co., Chu Fong Metallic Industrial Corp	09/01/93–08/31/94
The People's Republic of China:	
Chrome-Plated Lug Nuts	
A–570–808	
China National Automotive Industry I/E Corporation, Nantong Branch, China National Automotive Industry, I/E Corporation, Yangzhou Branch, China National Automotive Industry, I/E Corporation, China National Machinery & Equipment I/E Corporation	09/01/93–08/31/94
The People's Republic of China:	
Chrome-Plated Lug Nuts	
A–570–808	
Ningbo Knives & Scissors Factory, Rudong Grease-Gun Factory, Shanghai Automobile Import & Export Corp., Tianjin Automobile Import & Export Corp	09/01/93–08/31/94
All other exporters of chrome-plated lug nuts from the PRC are conditionally covered by this review.	
The People's Republic of China:	
CDIW Fittings & Glands	
A–570–820	
China National Metal Products Import and Export Corp	02/18/93–08/31/94
All other exporters of CDIW fittings and glands from the PRC are conditionally covered by this review.	
United Kingdom:	
Steel Crankshafts	
A–412–602	
UES Ltd.—Forgings Division	09/01/93–08/31/94
Countervailing Duty Proceedings	
New Zealand:	
Lamb Meat	
C–614–503	04/01/93–03/31/94

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: October 7, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–25376 Filed 10–12–94; 8:45 am]

BILLING CODE 3510–05–M

[C–408–046]

Determination Not to Revoke Countervailing Duty Order; Sugar From the European Community

AGENCY: International Trade Administration, Import 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 sugar from the European Community (EC).

EFFECTIVE DATE: October 13, 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 5, 1994, the Department published in the **Federal Register** (59 FR 34410) its intent to revoke the countervailing duty order on sugar from the EC (43 FR 33237; July 31, 1978). 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: October 4, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–25375 Filed 10–12–94; 8:45 am]

BILLING CODE 3510–DS–P–M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 94–00006." A summary of the application follows.

Summary of the Application

Applicant: P & B International, 7 Broadway, Suite 1032, New York, New York 10004.

Contact: Peter T. Peterson, Managing Partner.

Telephone: (800) 762–7740.

Application No.: 94–00006.

Date Deemed Submitted: October 6, 1994.

Members (in addition to applicant): Peter T. Peterson, Managing Partner and Oliver L. Brown, Senior Partner.

P & B International seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade:

1. *Products*
   All products.
2. *Services*
   All services.
3. *Export Trade Facilitation Services (as they relate to the Export of Products and Services)*
   All export trade facilitation services including, but not limited to, consulting; foreign market research; marketing and trade promotion; financing; insurance; licensing; services related to compliance with customs documentation and procedures; transportation and shipping; warehousing and other services to facilitate the transfer of ownership and/or distribution; and communication and processing of export orders.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, as an Export Intermediary, P & B International may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities as they relate to exporting Products and/or Services to the Export Markets;
3. Enter into exclusive sales agreements with Suppliers regarding sales of Products and/or Services in the Export Markets; such agreement may prohibit Suppliers from exporting independently of P & B International;
4. Enter into exclusive sales and/or territorial agreements with distributors in the Export Markets;
5. Establish the price of Products and/or Services for sale in the Export Markets;
6. Allocate export orders among his Suppliers; and
7. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.
2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

Dated: October 7, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–25378 Filed 10–12–94; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 100494C]

Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its Advisory entities will hold a public meeting on October 24–28, 1994, at the Clarion Hotel San Francisco Airport, 401 East Millbrae Avenue, Millbrae, CA (415) 692–6363.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW. Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

Council Meeting

The Council meeting will begin on October 24, 1994, at 1:00 p.m. in a closed session (not open to the public) to discuss personnel matters and litigation. The open session begins at 2:00 p.m. The Council meeting will reconvene at 8:00 a.m. each day, October 25 through October 28, and may continue each day into the evening hours, if necessary, to complete business. The following items are on the Council agenda:

A. Call to Order

1. Opening remarks, introductions, roll call;
2. Approve proposed agenda; and
3. Approve minutes of August 1994 meeting.

B. Administrative Matters

1. Western Pacific Fishery Management Council request for authority to manage Pacific Ocean Pelagic Fish Species;
2. Status of legislation;
3. Appointments to Scientific and Statistical Committee, Groundfish Permit Review Board, Observer/Data Collection Program Steering Committee and Advisory Subpanels;
4. NMFS response to Council research needs;
5. Approve revisions to operating procedures and personnel rules;
6. Alaska and California data confidentiality issues;
7. Approve Budget Committee Report;
8. Approve work load priorities for 1995; and
9. Approve draft agenda for March 1995.

C. Coastal Pelagic Species Management

Draft fishery management plan.

D. Habitat Issues

E. Salmon Management

1. Sequence of events and status of fisheries;
2. Updates on status and actions to restore natural stocks of Oregon Coastal and Puget Sound Coho;
3. Hook-and-Release mortality estimates;
4. Plan Amendment 12—

Issue 1: Commercial recreational harvest allocation north of Cape Falcon

Issue 2: Recreational interport harvest allocation north of Cape Falcon

Issue 3: Modification of *Hoh v. Baldrige* management plans

Issue 4: Allocation in fisheries north of Cape Falcon of additional Washington Coastal Coho impacts available due to Amendment 11

Issue 5: Impact limit on Oregon Coastal Natural Coho in fisheries north of Cape Falcon during incidental harvest years under Amendment 11; and

5. Consistency of adult equivalents and harvest rate management with Klamath tribal harvest allocation.

F. Groundfish Management

1. Status of implementation of Council actions;
2. Status of fisheries and inseason trip limit adjustments;
3. Final harvest levels and other specifications for 1995;
4. Management measures for 1995 and beyond;
5. Interim management regime for the limited-entry fixed gear Sablefish fishery beginning in 1995;
6. Individual quotas for the limited-entry fixed gear Sablefish fishery;
7. Consistency of Groundfish Plan with state setnet closure in the exclusive economic zone off Southern California; and
8. Experimental fishing permits and data collection for the 1995 shore-based Whiting fishery and consideration of need for a plan amendment to allow sorting of Salmon when landing.

G. Pacific Halibut Management

1. Summary of 1994 fisheries;
2. Review of the Area 2A bycatch estimate;
3. Review of the Area 2A stock assessment; and
4. Catch sharing plan for 1995 and beyond.

Other Meetings

The Scientific and Statistical Committee (SSC) Salmon Subcommittee will meet October 23, at 2:00 p.m. The SSC will meet October 24–25, to discuss scientific issues included on the Council agenda and will accept public comments on October 24, at 4:00 p.m.

The Budget Committee will meet on October 24, at 10:00 a.m., to discuss the Council's fiscal year 94 and 95 budgets.

The Enforcement Consultants will meet on October 25, at 1:00 p.m., to address enforcement issues related to Council agenda items.

The Habitat Steering Group will meet October 24, at 10:00 a.m., to consider activities affecting the habitat of fish stocks managed by the Council.

The Groundfish Advisory Subpanel will convene on October 24, at 1:00 p.m., and on October 25, at 8:00 a.m., to address groundfish management items on the agenda.

The Salmon Advisory Subpanel will meet on October 24, at 1:00 p.m., and on October 25, at 8:00 a.m., to address salmon management items on the Council agenda.

Detailed agendas for the above advisory meetings will be available after October 14, 1994.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: October 6, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management,

National Marine Fisheries Service.

[FR Doc. 94–25253 Filed 10–6–94; 4:45 pm]

BILLING CODE 3510–22–F

[I.D. 100494D]

Western Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: Hawaii members of the Western Pacific Fishery Management Council's Crustaceans Plan Team (Plan Team) and Crustaceans Advisory Panel (AP) will hold a meeting on October 27–28, 1994, from 8:00 a.m. until 5:00 p.m. each day. The meetings will be held in Conference Room 305 of the State Office Tower, Leiopapa A Kamehameha Building, 235 South Beretania Street, Honolulu, HI.

The purpose of the meeting is to discuss concerns regarding the Northwestern Hawaiian Islands lobster quota management system, and examine ways to address these concerns. The Plan Team and AP members will jointly prepare recommendations for presentation to the Council at its next meeting in November.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Dated: October 6, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management,

National Marine Fisheries Service.

[FR Doc. 94–25283 Filed 10–12–94; 8:45 am]

BILLING CODE 3510–22–F

Technology Administration

[Docket No. 930948–3248]

National Medal of Technology

AGENCY: Office of Technology Policy, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of extension of time for nominations.

SUMMARY: This notice announces that the Department of Commerce has extended the time for nominations of individuals, teams of up to four individuals, and companies for the 1995 National Medal of Technology. Nominations will close December 15, 1994.

FOR FURTHER INFORMATION OR NOMINATION PACKAGES, CONTACT: Manager, National Medal of Technology, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, Room 4418, Washington, DC 20230, (202) 482–2100. Fax (202) 219–8667.

SUPPLEMENTARY INFORMATION: Mandated by Congress and awarded annually by the President of the United States, the National Medal of Technology is our country's highest honor for achievements in technology. This prestigious award is given to American individuals, teams and U.S.-owned companies whose technological innovations have significantly contributed to job creation, economic prosperity, and a higher standard of living.

An individual nominee for the National Medal of Technology must be a U.S. citizen. A team nomination can consist of up to four U.S. citizens. A U.S.-owned company nominee must have more than 50 percent of their shares or assets owned by U.S. citizens.

Dated: October 6, 1994.

Graham R. Mitchell,

Assistant Secretary for Technology Policy.

[FR Doc. 94–25377 Filed 10–12–94; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

First Integration of Textile and Apparel Products into GATT 1994

October 11, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

NOTICE: List of textile and apparel products to be integrated into GATT 1994 in the first stage.

FOR FURTHER INFORMATION CONTACT: Julie Carducci, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In anticipation of the passage of the legislation implementing the World Trade Organization Agreement on Textiles and Clothing (Agreement), and pursuant to Article 2, Paragraph 6 of the Agreement, CITA has determined that on the day the Agreement enters into force, the following textile and apparel products in the Annex to the Agreement will be integrated into the GATT 1994 in the first stage. Therefore, all quantitative restraints on any of these products will be eliminated and no new limits will be applied except in accordance with the rules and procedures set out in the Agreement Establishing the World Trade Organization.

The products set out below account for 16% of the total volume of U.S. 1990 imports of the products in the Annex. As specified in the Agreement, this list includes products from each of the four groups: tops and yarns, fabrics, made-up textile products, and clothing.

1990 HTS
3005901000
3005905000
4202128010
4202128050
4202224010
4202923010
4202929010
5004000000
5005000010
5006000010
5006001000
5007103020
5007103040
5007103090
5007200010
5007200020
5007200040
5007200090

1990 HTS
5007903020
5007903040
5007903090
5110000000
5113000000
5208312000
5208321000
5208412000
5208421000
5208512000
5208521000
5209313000
5209413000
5209513000
5307100000
5307200000
5310100020
5310100040
5310100060
5310900000
5311006000
5402103020
5402203020
5402410010
5402410020
5402410030
5402420000
5402430020
5402490010
5402490050
5403330020
5403390020
5404101000
5404102020
5404102040
5404102090
5404900000
5405003000
5405006000
5407301000
5501300000
5503200000
5603001090
5608901000
5608903000
5609001000
5609002000
5609003000
5609004000
5701101300
5701901010
5701901090
5701902010
5701902090
5702101000
5702109090
5702201000
5702202000
5702391000
5702392090
5702491500
5702492000
5702592000
5702912000
5702992000
5703900000
5705001000
5705002090
5801902010
5802200010
5802300010
5803904010
5804100010
5804290010

1990 HTS
5804300010
5805001000
5805002000
5805004090
5806103010
5806393010
5806400000
5807101090
5807102010
5807102020
5807102090
5807901090
5807902010
5807902020
5807902090
5808102090
5808103090
5808900090
5810920040
5810990090
5811004000
5903101000
5903101500
5903102010
5903102090
5903103000
5903201000
5903201500
5903202000
5903203090
5903901000
5903901500
5903902000
5903903090
5904100000
5904910000
5904920000
5905001000
5906100000
5906911000
5906912000
5906913000
5906991000
5906992000
5906993000
5908000000
5909001000
5909002000
5910001010
5910001020
5910001030
5910001060
5910001070
5910001090
5910009000
5911101000
5911102000
5911201000
5911202000
5911310010
5911310020
5911310090
5911320010
5911320020
5911320090
5911400000
5911900000
6001990010
6002990010
6108220010
6113000005
6113000010
6113000012
6116100500

1990 HTS
6116100800
6116101000
6116101510
6116101810
6116102510
6116103540
6116104505
6116104515
6116104540
6116105000
6116105001
6116106040
6116107040
6116109040
6116920500
6116920800
6116921000
6116930500
6116930800
6116931000
6116992000
6116993000
6116999040
6203421000
6203431000
6204621000
6204631000
6208920025
6210102000
6210104010
6210201010
6210202010
6210301010
6210302010
6210401010
6210402010
6210501010
6210502010
6211201025
6211201050
6216000500
6216000800
6216001000
6216001210
6216001510
6216001810
6216002010
6216002300
6216002301
6216002505
6216002540
6216002740
6216002840
6216002900
6216002901
6216003005
6216003040
6216003140
6216003240
6216003300
6216003400
6216003500
6216004300
6216004400
6216004600
6216004700
6216004701
6216004805
6301900020
6302290010
6302390020
6302991000
6304193030
6304910060

1990 HTS
6304991000
6304994000
6304996030
6305100000
6306210000
6306221000
6306290000
6306310000
6306390000
6306410000
6306490000
6306910000
6306990000
6309000010
6309000020
6406108090
6406109090
6406991580
6501003000
6501006000
6502002000
6502004000
6502006030
6502006060
6502009060
6503003000
6503006000
6504003000
6504006000
6504009045
6504009075
6505908015
6601100000
6601910000
6601990000
8708210000
8804000000
9113904000
9404902000
9502910000

See 59 FR 26212, published on May 19, 1994; 59 FR 29781, published on June 9, 1994; 59 FR 36428, published on July 18, 1994; and 59 FR 40874, published on August 10, 1994.The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–25461 Filed 10–12–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); FY95 DRG Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG Revised Rates.

SUMMARY: This notice provides the updated adjusted standardized amounts, DRG relative weights, outlier thresholds, and beneficiary cost-share per diem rates to be used for FY 1995 under the CHAMPUS DRG-based payment system. It also describes the non-regulatory changes made to the CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

EFFECTIVE DATES: The rates and weights contained in this notice are effective for admissions occurring on or after October 1, 1994.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238. The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Rose M. Sabo, M.P.A., Program Development Branch, OCHAMPUS, telephone (303) 361–1178.

To obtain copies of this document, see the **ADDRESSES** section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), and October 22, 1990 (55 FR 42560).

An explicit tenet of these final rules, and one based on the statute authorizing use of DRGs by CHAMPUS, is that the CHAMPUS DRG-based payment system is modeled on the Medicare prospective payment system (PPS), and that, whenever practicable, the CHAMPUS system will follow the same rules that apply to the Medicare PPS. HCFA publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the CHAMPUS DRG-Based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS which affect the CHAMPUS DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. Grouping for all other DRGs under the CHAMPUS system is identical to the Medicare PPS.

For FY 1995, HCFA will implement a number of changes in major diagnostic categories (MDCs), revisions to secondary and major problems lists and surgical hierarchies to improve DRG classifications based on resource utilization. The CHAMPUS Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

CHAMPUS will continue to use the same wage index amounts used for the Medicare PPS. In addition, CHAMPUS will duplicate all changes with regard to the wage index for specific hospitals which are redesignated by the Medicare Geographic Classification Review Board. Consistent with HCFA, rural hospitals will receive the same payment rate as other urban hospitals.

C. Hospital Market Basket

We will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS according to HCFA's September 1 final rule.

D. Outlier Payments

CHAMPUS is adopting the HCFA outlier thresholds for FY95. The long-stay threshold shall equal the lesser of 3.0 standard deviations or 22 days above the DRG's geometric LOS. Long-stay outliers will be reimbursed the DRG-based amount plus 49 percent of the per

diem rate for the DRG for each covered day of care beyond the long-stay outlier threshold. The cost outlier will be reimbursed the DRG-based amount plus 80 percent of the standardized costs exceeding the threshold. The cost outlier threshold shall be the DRG payment (wage-adjusted but prior to adjustment for indirect medical education) plus a flat rate of $18,800.

E. Hospitals Excluded from the Prospective Payment System

CHAMPUS will continue to follow the limitations of exclusions for hospitals excluded from the prospective payment system. As HCFA clarified in its final rule of September 2, 1994, "long-term care units" of general hospitals are not exempt nor were they intended to be exempt from the prospective payment system. CHAMPUS shares HCFA's concern that excluding such units could inadvertently encourage hospitals to divert long-stay cases to the excluded unit, leaving only the shorter, less costly cases to be paid under the prospective payment system, circumventing the intent of Congress to use the DRG system to control hospital charges. Designation by Medicare as an exempt hospital will result in automatic exemption under CHAMPUS. A hospital which has been denied exemption status by Medicare cannot be exempt under CHAMPUS.

G. Medicare Changes Which Are Not Being Adopted by CHAMPUS

Transfer cases will be paid as in previous years based on a per diem rate for each day of the patient's stay in that hospital not to exceed the DRG-based payment amount (including outlier payments). The per diem rate is determined by dividing the appropriate wage-adjusted prospective payment rate, including adjustment for indirect medical education, by the geometric mean length of stay for the DRG into which the case falls. CHAMPUS is not adopting the graduated per diem methodology discussed by HCFA at this time. Outlier cases will be paid as in previous years, applying HCFA's outlier thresholds as described above. Capital costs will continue to be handled as a pass-through cost under CHAMPUS. Only those hospitals not exempt from the prospective payment system are entitled to payment consideration for capital costs.

III. Cost-to-Charge Ratio

For FY 1995, the cost-to-charge ratio used for the CHAMPUS DRG-based payment system will be 0.6193 which is increased to 0.6293 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.6900.

IV. Updated Rates and Weights

Tables 1 and 2 provide the rates and weights to be used under CHAMPUS DRG-based payments system during FY 1995 and which are a result of the changes described above. The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR Part 199.

Dated: October 7, 1994.

L. M. Bynum,

Alternative Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

EDITORIAL NOTE - This table will not appear in the code of Federal Regulations

Table 1 - National Urban and Rural Adjusted
Standardized Amounts, Labor/Nonlabor, and
Cost Share Per Diem

The following summary provides the adjusted standardized amounts and the cost-share per diem for beneficiaries other than dependents of active-duty members.

The adjusted standardized amounts are effective for admissions occurring on or after October 1, 1994.

National Large Urban Adjusted
Standardized Amount $3,264.29
Labor portion $2,330.70
Nonlabor portion $933.59

National Other Areas
Standardized Amount $3,217.98
Labor portion $2,297.64
Nonlabor portion $920.34

The cost-share per diem is effective for inpatient days of care occurring on or after October 1, 1994.

Cost-share per diem for beneficiaries other than dependents
of active-duty members $323.00

EDITORIAL NOTE - THIS TABLE WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS.

TABLE 2 - CHAMPUS WEIGHTS AND THRESHOLD SUMMARY

EFFECTIVE FOR ADMISSIONS OCCURRING ON OR AFTER OCTOBER 1, 1994.

THE FOLLOWING SUMMARY SHOWS THE FINAL CHAMPUS DRG WEIGHTS AS WELL AS THE ARITHMETIC AND GEOMETRIC AVERAGE LENGTHS OF STAY AND OUTLIER THRESHOLDS FOR ALL CHAMPUS DRGS. LONG-STAY THRESHOLD (A) IS APPLICABLE TO ALL HOSPITALS EXCEPT CHILDREN'S HOSPITALS, AND LONG STAY THRESHOLD (B) IS APPLICABLE TO CHILDEN'S HOSPITALS

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.7759	10.1	7.3	1	29	24
2	CRANIOTOMY FOR TRAUMA AGE >17	5.2169	12.7	7.7	1	29	24
3	CRANIOTOMY AGE 0-17	2.7172	8.6	5.2	1	27	22
4	SPINAL PROCEDURES	2.0219	6.9	4.9	1	26	21
5	EXTRACRANIAL VASCULAR PROCEDURES	1.6631	4.1	3.4	1	19	10
6	CARPAL TUNNEL RELEASE	0.6339*	3.2	2.2	1	24	24
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.8056	10.5	7.3	1	29	24
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	0.9414	2.5	2.0	1	15	7
9	SPINAL DISORDERS & INJURIES	1.8124	10.2	5.8	1	27	22
10	NERVOUS SYSTEM NEOPLASMS W CC	1.3004	7.8	5.3	1	27	22
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.9437	4.6	3.1	1	25	16
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.6118	9.8	6.2	1	28	23
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.8250	5.9	4.6	1	26	18
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.4134	6.9	5.0	1	27	22
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.8107	3.7	3.0	1	20	10
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.3027	7.6	5.2	1	27	22
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.6613	2.9	2.2	1	18	8
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	1.0478	5.8	4.3	1	26	19
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6860	3.7	2.9	1	23	11
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.0327	8.6	6.4	1	28	23
21	VIRAL MENINGITIS	0.7022	3.8	3.1	1	18	9
22	HYPERTENSIVE ENCEPHALOPATHY	0.7455	3.9	3.3	1	19	10
23	NONTRAUMATIC STUPOR & COMA	0.9279	3.0	2.2	1	23	10
24	SEIZURE & HEADACHE AGE >17 W CC	0.9813	4.5	3.4	1	25	14
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.5984	3.3	2.6	1	19	9
26	SEIZURE & HEADACHE AGE 0-17	0.5340	2.7	2.2	1	15	7
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.9072	6.4	3.2	1	25	20
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.3944	5.5	3.6	1	25	20
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.9492	4.9	2.7	1	24	16
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.5122	2.4	1.8	1	15	7
31	CONCUSSION AGE >17 W CC	0.8774	2.6	2.1	1	13	6
32	CONCUSSION AGE >17 W/O CC	0.6026	1.8	1.5	1	7	4
33	CONCUSSION AGE 0-17	0.3949	1.5	1.3	1	4	3
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.3873	6.4	3.9	1	25	20
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.6671	3.8	2.4	1	24	12
36	RETINAL PROCEDURES	0.7335	1.7	1.4	1	6	3
37	ORBITAL PROCEDURES	0.7904	2.4	1.8	1	14	7
38	PRIMARY IRIS PROCEDURES	0.4005*	2.7	2.0	1	16	16

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.5868	1.5	1.3	1	5	3
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.8167	2.5	1.7	1	15	7
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.8453	2.2	1.6	1	12	6
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.8903	2.7	1.8	1	16	7
43	HYPHEMA	0.3360	3.5	2.9	1	21	10
44	ACUTE MAJOR EYE INFECTIONS	0.4863	3.5	3.1	1	14	8
45	NEUROLOGICAL EYE DISORDERS	0.6361	3.7	3.1	1	18	10
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	1.4177	7.5	5.2	1	27	22
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.5250	2.8	2.3	1	14	7
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.3066	2.3	2.1	1	8	5
49	MAJOR HEAD & NECK PROCEDURES	2.1557	5.4	3.3	1	25	20
50	SIALOADENECTOMY	0.8011	1.6	1.5	1	5	3
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.6838*	3.0	2.0	1	22	22
52	CLEFT LIP & PALATE REPAIR	0.7461	2.2	1.9	1	9	5
53	SINUS & MASTOID PROCEDURES AGE >17	0.8784	2.2	1.6	1	13	6
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.7771	2.3	1.6	1	15	6
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	0.8290	2.1	1.6	1	11	5
56	RHINOPLASTY	0.9107	2.1	1.8	1	8	4
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.5933	2.4	2.0	1	13	6
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.6013	1.9	1.6	1	8	4
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.5237	1.7	1.4	1	7	4
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.4283	1.5	1.3	1	5	3
61	MYRINGOTOMY W TUBE INSERTION AGE >17	1.0019*	5.1	2.9	1	25	25
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.7197	2.7	2.0	1	18	8
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.2481	2.8	2.2	1	15	7
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.4912	7.4	4.2	1	26	21
65	DYSEQUILIBRIUM	0.4722	2.5	2.1	1	11	6
66	EPISTAXIS	0.5838	3.7	2.9	1	22	10
67	EPIGLOTTITIS	0.7999	3.6	3.2	1	15	8
68	OTITIS MEDIA & URI AGE >17 W CC	0.6760	3.6	3.0	1	17	9
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.4747	3.0	2.5	1	15	8
70	OTITIS MEDIA & URI AGE 0-17	0.4219	2.8	2.4	1	13	7
71	LARYNGOTRACHEITIS	0.3090	1.8	1.6	1	7	4
72	NASAL TRAUMA & DEFORMITY	0.4200	1.5	1.3	1	4	2
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.7042	3.3	2.5	1	23	10
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.4523	2.6	2.0	1	15	7
75	MAJOR CHEST PROCEDURES	3.1426	9.2	7.5	1	29	24
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.4449	9.0	6.7	1	28	23
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2865	4.7	3.4	1	25	17
78	PULMONARY EMBOLISM	1.6164	7.7	6.8	1	28	18
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	2.1252	9.6	7.4	1	29	24
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.3579	6.5	5.1	1	27	19
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.4139	6.5	4.7	1	26	21
82	RESPIRATORY NEOPLASMS	1.4965	7.0	4.9	1	26	21
83	MAJOR CHEST TRAUMA W CC	1.0886	6.3	4.8	1	26	21
84	MAJOR CHEST TRAUMA W/O CC	0.6384	2.8	2.3	1	16	8
85	PLEURAL EFFUSION W CC	1.3328	6.6	5.0	1	27	22
86	PLEURAL EFFUSION W/O CC	0.8295	4.3	3.2	1	25	15
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.7730	7.0	5.2	1	27	22
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.1533	5.7	4.6	1	26	16

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.2633	6.2	5.2	1	27 17
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.7740	4.4	3.8	1	20 11
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.6227	3.7	3.2	1	16 9
92	INTERSTITIAL LUNG DISEASE W CC	1.2038	6.0	4.5	1	26 17
93	INTERSTITIAL LUNG DISEASE W/O CC	0.6202	3.8	3.1	1	24 11
94	PNEUMOTHORAX W CC	1.1680	6.4	5.1	1	27 19
95	PNEUMOTHORAX W/O CC	0.6060	3.9	3.1	1	24 11
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.9521	4.9	4.0	1	25 13
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.6306	3.6	3.1	1	17 9
98	BRONCHITIS & ASTHMA AGE 0-17	0.5307	2.9	2.5	1	13 7
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.7754	3.2	2.5	1	20 9
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5584	2.3	1.9	1	11 6
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.9965	4.6	3.5	1	25 14
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.5089	2.9	2.1	1	18 8
103	HEART TRANSPLANT	-	-	-	-	-
104	CARDIAC VALVE PROCEDURES W CARDIAC CATH	8.9205	14.3	12.6	2	34 29
105	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	6.3721	10.1	8.9	1	30 24
106	CORONARY BYPASS W CARDIAC CATH	6.2021	10.1	9.3	2	31 20
107	CORONARY BYPASS W/O CARDIAC CATH	5.1445	8.4	7.7	2	25 16
108	OTHER CARDIOTHORACIC PROCEDURES	5.1300	9.9	7.8	1	29 24
109	NO LONGER VALID	-	-	-	-	-
110	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.5021	9.6	7.7	1	29 24
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2908	6.1	5.2	1	27 17
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.2615	4.0	3.1	1	25 12
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	3.6044	13.6	9.9	1	31 26
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.8271	7.9	5.9	1	27 22
115	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	5.9035	12.1	10.2	1	32 27
116	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GENERATOR PRO	2.9331	5.3	3.8	1	25 17
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.8667	5.6	3.2	1	25 20
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.6406	2.2	1.8	1	10 5
119	VEIN LIGATION & STRIPPING	0.7080	2.1	1.8	1	9 5
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.6332	9.9	6.8	1	28 23
121	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.9923	6.8	5.8	1	27 18
122	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.5324	5.3	4.7	1	25 13
123	CIRCULATORY DISORDERS W AMI, EXPIRED	2.0635	3.8	2.3	1	24 14
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.3993	4.1	3.2	1	25 12
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1.0247	2.6	2.2	1	14 7
126	ACUTE & SUBACUTE ENDOCARDITIS	2.5140	12.5	10.5	1	32 27
127	HEART FAILURE & SHOCK	1.1876	5.4	4.3	1	26 16
128	DEEP VEIN THROMBOPHLEBITIS	0.9455	7.0	6.0	1	28 17
129	CARDIAC ARREST, UNEXPLAINED	1.7927	3.8	2.2	1	24 14
130	PERIPHERAL VASCULAR DISORDERS W CC	1.1928	7.0	5.5	1	27 22
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7288	4.9	4.0	1	25 15
132	ATHEROSCLEROSIS W CC	1.0637	3.6	2.6	1	24 11
133	ATHEROSCLEROSIS W/O CC	0.9087	2.5	2.0	1	14 7
134	HYPERTENSION	0.5960	3.0	2.5	1	15 8
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	1.5952	4.9	3.5	1	25 16
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.5284	2.1	1.8	1	9 5
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.7621	3.4	2.2	1	24 11
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.7383	3.4	2.6	1	20 9

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.4745	2.2	1.8	1	10	5
140	ANGINA PECTORIS	0.6405	2.7	2.3	1	13	7
141	SYNCOPE & COLLAPSE W CC	0.6531	3.1	2.4	1	16	8
142	SYNCOPE & COLLAPSE W/O CC	0.5398	2.4	2.0	1	12	6
143	CHEST PAIN	0.5206	2.0	1.7	1	8	4
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1819	5.1	3.8	1	25	17
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7574	3.2	2.5	1	20	9
146	RECTAL RESECTION W CC	2.6146	9.4	8.7	2	25	17
147	RECTAL RESECTION W/O CC	1.9637	9.4	7.9	1	29	23
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.2431	11.1	9.5	1	31	26
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.7547	6.8	5.9	1	27	17
150	PERITONEAL ADHESIOLYSIS W CC	2.3998	9.6	7.4	1	29	24
151	PERITONEAL ADHESIOLYSIS W/O CC	1.3024	5.2	3.9	1	25	17
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.7614	8.2	6.9	1	28	21
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1609	5.3	4.6	1	26	15
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3.4369	10.4	8.3	1	30	25
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.4005	5.1	4.4	1	26	14
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.1887	5.8	4.3	1	26	18
157	ANAL & STOMAL PROCEDURES W CC	1.4068	5.5	3.9	1	25	19
158	ANAL & STOMAL PROCEDURES W/O CC	0.5550	2.3	1.9	1	10	5
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.2584	4.5	3.5	1	25	14
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.8502	2.8	2.4	1	13	7
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.9126	3.2	2.5	1	20	9
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.6539	1.6	1.4	1	5	3
163	HERNIA PROCEDURES AGE 0-17	0.4992	1.4	1.3	1	4	2
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.0006	7.5	6.6	1	28	19
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.1873	4.8	4.2	1	20	11
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.0819	3.8	3.3	1	17	9
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.7227	2.5	2.2	1	8	5
168	MOUTH PROCEDURES W CC	1.8379	6.1	4.2	1	26	21
169	MOUTH PROCEDURES W/O CC	0.8185	2.4	1.9	1	12	6
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	3.1048	11.1	7.9	1	29	24
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	0.9985	3.7	3.1	1	19	10
172	DIGESTIVE MALIGNANCY W CC	1.5652	7.3	4.9	1	26	21
173	DIGESTIVE MALIGNANCY W/O CC	0.8612	4.3	3.2	1	25	14
174	G.I. HEMORRHAGE W CC	0.9607	4.3	3.5	1	22	11
175	G.I. HEMORRHAGE W/O CC	0.5845	3.0	2.5	1	15	8
176	COMPLICATED PEPTIC ULCER	0.9632	4.8	3.7	1	25	14
177	UNCOMPLICATED PEPTIC ULCER W CC	0.8828	4.1	3.4	1	21	11
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.5875	2.8	2.4	1	13	7
179	INFLAMMATORY BOWEL DISEASE	1.0708	6.0	4.7	1	26	18
180	G.I. OBSTRUCTION W CC	0.9108	5.0	3.8	1	25	15
181	G.I. OBSTRUCTION W/O CC	0.4951	3.2	2.7	1	17	8
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.7038	3.8	3.0	1	23	11
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5634	2.8	2.3	1	15	7
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.3306	2.5	2.2	1	11	6
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.8493	3.8	2.8	1	24	13
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.4558	2.4	1.9	1	13	6
187	DENTAL EXTRACTIONS & RESTORATIONS	0.6871	2.5	2.1	1	15	7
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.1827	5.5	4.0	1	25	18

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5948	3.5	2.5	1	24	11
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.3790	2.0	1.7	1	8	4
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.9696	13.7	10.1	1	32	27
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	2.1202	8.1	5.7	1	27	22
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	3.5095	10.8	9.0	1	31	26
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	1.4795	5.5	4.0	1	25	20
195	CHOLECYSTECTOMY W C.D.E. W CC	2.1537	6.9	6.1	1	27	16
196	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6349	5.7	5.0	1	26	14
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	1.9820	6.7	5.4	1	27	18
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	1.0194	3.4	2.8	1	18	9
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3905	9.3	6.2	1	28	23
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.8734	8.3	4.9	1	26	21
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.1968	10.9	7.4	1	29	24
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	2.0220	8.3	6.0	1	28	23
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.2638	6.9	4.7	1	26	21
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2852	6.1	4.8	1	26	18
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.4780	7.0	5.1	1	27	22
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.7754	4.1	2.9	1	24	14
207	DISORDERS OF THE BILIARY TRACT W CC	0.9699	4.4	3.3	1	25	14
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.5863	2.8	2.2	1	16	8
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY	2.8330	6.7	6.2	1	20	13
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.5156	9.1	7.8	1	29	22
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.5870	6.0	5.2	1	27	15
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.3873	4.9	3.4	1	25	16
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	2.2235	9.1	5.8	1	27	22
214	BACK & NECK PROCEDURES W CC	2.1444	5.7	4.5	1	26	16
215	BACK & NECK PROCEDURES W/O CC	1.2447	3.4	2.9	1	15	8
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.7607	6.8	4.7	1	26	21
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.8420	10.3	7.0	1	28	23
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.6334	5.9	4.5	1	26	17
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.0662	3.2	2.6	1	15	8
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.9141	2.5	1.9	1	14	7
221	KNEE PROCEDURES W CC	1.8173	4.9	3.9	1	25	14
222	KNEE PROCEDURES W/O CC	1.1066	2.6	2.1	1	11	6
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.8756	2.2	1.8	1	9	5
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.8096	1.9	1.6	1	8	4
225	FOOT PROCEDURES	0.8785	2.6	2.0	1	16	7
226	SOFT TISSUE PROCEDURES W CC	1.2487	4.6	3.2	1	25	15
227	SOFT TISSUE PROCEDURES W/O CC	0.8085	2.5	2.0	1	13	6
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	1.1979	3.1	2.2	1	20	9
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.7047	1.8	1.5	1	7	4
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.8797	3.9	2.0	1	24	13
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	1.0950	3.1	2.3	1	21	9
232	ARTHROSCOPY	0.9407	2.3	1.8	1	12	6
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.9171	9.0	6.0	1	27	22
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.2736	3.6	2.8	1	23	10
235	FRACTURES OF FEMUR	0.9219	8.0	4.6	1	26	21
236	FRACTURES OF HIP & PELVIS	1.0406	7.3	5.3	1	27	22
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.6413	5.1	3.4	1	25	19
238	OSTEOMYELITIS	1.4186	8.2	6.3	1	28	23

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.4751	9.2	6.1	1	28 23
240	CONNECTIVE TISSUE DISORDERS W CC	1.4139	6.6	5.1	1	27 20
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.7284	4.1	2.9	1	24 13
242	SEPTIC ARTHRITIS	1.1448	7.4	5.7	1	27 22
243	MEDICAL BACK PROBLEMS	0.6501	4.2	3.1	1	25 13
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	1.5651	9.9	5.7	1	27 22
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	1.0475	5.0	3.9	1	25 16
246	NON-SPECIFIC ARTHROPATHIES	0.5899	3.8	3.5	1	13 8
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.6641	4.0	2.7	1	24 13
248	TENDONITIS, MYOSITIS & BURSITIS	0.6562	3.9	3.0	1	24 12
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.8172	4.3	3.1	1	25 15
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8426	2.6	2.1	1	15 7
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.5882	1.9	1.6	1	9 4
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.3622	1.4	1.2	1	3 2
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.7431	4.5	3.4	1	25 14
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.5396	3.3	2.3	1	24 10
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.4361	2.3	1.6	1	11 5
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.6238	3.1	2.2	1	18 8
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.0563	3.1	2.7	1	13 7
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.8732	2.6	2.3	1	9 5
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.7330	2.2	1.9	1	9 5
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7340	1.6	1.4	1	5 3
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1.0218	1.8	1.6	1	7 4
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.8641	2.3	1.9	1	12 6
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.1100	11.2	8.7	1	30 25
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.2032	6.9	5.6	1	27 22
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.8464	5.6	4.5	1	26 18
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C	1.0412	3.5	2.6	1	24 11
267	PERIANAL & PILONIDAL PROCEDURES	0.5056	1.6	1.4	1	6 3
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	0.9216	2.4	2.0	1	12 6
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.9192	6.6	4.3	1	26 21
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7089	2.9	2.1	1	18 8
271	SKIN ULCERS	1.0048	8.6	6.6	1	28 23
272	MAJOR SKIN DISORDERS W CC	1.3809	7.7	5.6	1	27 22
273	MAJOR SKIN DISORDERS W/O CC	0.4583	3.8	3.1	1	23 11
274	MALIGNANT BREAST DISORDERS W CC	1.2291	6.2	4.0	1	25 20
275	MALIGNANT BREAST DISORDERS W/O CC	0.6641	3.1	2.5	1	20 9
276	NON-MALIGANT BREAST DISORDERS	0.6128	4.1	3.6	1	18 10
277	CELLULITIS AGE >17 W CC	0.8787	5.6	4.7	1	26 15
278	CELLULITIS AGE >17 W/O CC	0.5920	4.2	3.6	1	18 10
279	CELLULITIS AGE 0-17	0.4632	3.5	3.1	1	15 8
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.7742	3.4	2.4	1	24 12
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.6959	2.1	1.7	1	10 5
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.4436	1.6	1.4	1	6 3
283	MINOR SKIN DISORDERS W CC	0.5696	3.6	2.9	1	22 11
284	MINOR SKIN DISORDERS W/O CC	0.3743	2.9	2.4	1	16 8
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.0590	10.1	8.1	1	30 25
286	ADRENAL & PITUITARY PROCEDURES	1.9787	5.9	5.2	1	21 12
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.8032	9.9	7.5	1	29 24
288	O.R. PROCEDURES FOR OBESITY	1.6340	4.2	3.9	1	12 8

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
289	PARATHYROID PROCEDURES	0.9925	3.1	2.4	1	16	8
290	THYROID PROCEDURES	0.7973	2.1	1.8	1	7	4
291	THYROGLOSSAL PROCEDURES	0.5102*	2.0	1.6	1	9	9
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.6294	9.9	6.6	1	28	23
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	0.7439	3.6	3.1	1	14	8
294	DIABETES AGE >35	0.7638	4.8	3.9	1	25	13
295	DIABETES AGE 0-35	0.6288	3.7	3.1	1	19	10
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	1.0123	5.4	3.9	1	25	17
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.5562	3.3	2.6	1	19	9
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.3264	2.5	2.1	1	11	6
299	INBORN ERRORS OF METABOLISM	1.1858	6.2	4.1	1	26	21
300	ENDOCRINE DISORDERS W CC	1.2001	6.1	4.1	1	26	21
301	ENDOCRINE DISORDERS W/O CC	0.6010	3.7	2.6	1	24	11
302	KIDNEY TRANSPLANT	7.0090	13.9	12.1	2	34	29
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.8105	9.6	8.0	1	29	22
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.1636	7.9	6.2	1	28	23
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.1658	4.3	3.8	1	20	11
306	PROSTATECTOMY W CC	1.1693	3.4	2.7	1	20	9
307	PROSTATECTOMY W/O CC	0.7410	2.6	2.3	1	10	6
308	MINOR BLADDER PROCEDURES W CC	1.3857	4.9	3.9	1	25	16
309	MINOR BLADDER PROCEDURES W/O CC	0.8742	2.7	2.3	1	13	7
310	TRANSURETHRAL PROCEDURES W CC	1.0723	3.5	2.7	1	22	10
311	TRANSURETHRAL PROCEDURES W/O CC	0.7208	2.1	1.8	1	9	5
312	URETHRAL PROCEDURES, AGE >17 W CC	0.7941	2.8	2.5	1	13	7
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.6950	2.5	2.1	1	15	7
314	URETHRAL PROCEDURES, AGE 0-17	0.4503*	2.3	2.3	1	24	24
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.3882	8.3	5.0	1	27	22
316	RENAL FAILURE	1.5999	6.7	4.8	1	26	21
317	ADMIT FOR RENAL DIALYSIS	0.5149*	3.9	2.8	1	25	25
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.8060	9.6	5.8	1	27	22
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.8376	5.2	2.9	1	24	19
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.8435	4.9	4.1	1	25	13
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.5538	3.6	3.2	1	15	8
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4884	3.6	3.1	1	15	8
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.7068	2.7	2.1	1	15	7
324	URINARY STONES W/O CC	0.3759	1.7	1.4	1	6	3
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.7470	4.7	3.5	1	25	13
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.6841	3.2	2.3	1	24	10
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3307	2.3	2.0	1	11	6
328	URETHRAL STRICTURE AGE >17 W CC	0.6732*	4.8	3.5	1	26	26
329	URETHRAL STRICTURE AGE >17 W/O CC	0.4291*	2.5	1.9	1	15	15
330	URETHRAL STRICTURE AGE 0-17	0.2903*	1.6	1.6	1	9	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0129	5.1	3.6	1	25	18
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6229	2.9	2.2	1	19	8
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.5517	3.7	2.6	1	24	12
334	MAJOR MALE PELVIC PROCEDURES W CC	2.0289	6.3	5.7	1	20	12
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.5776	5.3	5.0	1	15	10
336	TRANSURETHRAL PROSTATECTOMY W CC	0.9090	3.4	3.1	1	12	7
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7018	2.5	2.3	1	8	5
338	TESTES PROCEDURES, FOR MALIGNANCY	0.8950	3.9	3.2	1	25	12

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.1413	4.3	2.5	1	24	16
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.5079	1.4	1.2	1	4	2
341	PENIS PROCEDURES	1.3692	2.7	2.0	1	17	8
342	CIRCUMCISION AGE >17	0.6689*	4.1	2.7	1	25	25
343	CIRCUMCISION AGE 0-17	0.3945*	1.7	1.7	1	6	6
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0262	2.9	2.3	1	20	9
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.5532	1.8	1.6	1	6	3
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.0897	7.6	4.8	1	26	21
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.5680	2.9	2.2	1	24	10
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.5167	4.2	3.1	1	25	15
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.4762	1.9	1.6	1	8	4
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6204	4.0	3.6	1	16	9
351	STERILIZATION, MALE	0.3472*	1.3	1.3	1	5	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.7399	5.3	2.9	1	24	19
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.0716	7.2	6.5	1	25	15
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.3993	5.1	4.5	1	18	11
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.9456	3.2	3.0	1	8	5
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.8584	3.2	2.9	1	11	6
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.9183	7.1	5.9	1	27	18
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1689	3.8	3.5	1	12	7
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9401	3.0	2.8	1	8	5
360	VAGINA, CERVIX & VULVA PROCEDURES	0.8355	3.0	2.6	1	14	7
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.8436	2.7	2.2	1	15	7
362	ENDOSCOPIC TUBAL INTERRUPTION	0.5189*	1.4	1.4	1	5	5
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.6949	2.9	2.5	1	10	6
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.6161	2.4	1.8	1	14	6
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.0693	4.3	3.5	1	22	11
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.9157	4.8	3.1	1	25	19
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.4732	3.1	2.2	1	21	9
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.5416	3.2	2.9	1	12	7
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.4393	2.4	2.0	1	12	6
370	CESAREAN SECTION W CC	0.9822	4.3	3.9	1	13	8
371	CESAREAN SECTION W/O CC	0.7773	3.3	3.2	1	7	5
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5128	2.4	2.1	1	9	5
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3783	1.7	1.6	1	5	3
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.6673	2.1	2.0	1	5	3
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.6960	2.5	2.1	1	12	6
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4538	2.8	2.4	1	14	7
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.8695	3.0	2.3	1	19	9
378	ECTOPIC PREGNANCY	0.8732	2.6	2.2	1	11	6
379	THREATENED ABORTION	0.4742	3.4	2.3	1	24	10
380	ABORTION W/O D&C	0.4017	1.8	1.4	1	7	4
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.4782	1.4	1.3	1	4	2
382	FALSE LABOR	0.2320	1.6	1.3	1	5	3
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.3897	3.0	2.4	1	16	8
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.3534	2.5	1.8	1	15	7
385	NO LONGER VALID	-	-	-	-		
386	NO LONGER VALID	-	-	-	-		
387	NO LONGER VALID	-	-	-	-		
388	NO LONGER VALID	-	-	-	-		

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
389	NO LONGER VALID	-	-	-	-		
390	NO LONGER VALID	-	-	-	-		
391	NORMAL NEWBORN	0.1095	1.9	1.7	1	6	4
392	SPLENECTOMY AGE >17	2.3681	7.9	7.0	1	28	17
393	SPLENECTOMY AGE 0-17	1.9099	6.6	5.9	1	23	14
394	OTHER O R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.6374	6.0	4.0	1	25	20
395	RED BLOOD CELL DISORDERS AGE >17	1.0395	5.4	4.0	1	25	18
396	RED BLOOD CELL DISORDERS AGE 0-17	0.6930	4.1	3.4	1	23	11
397	COAGULATION DISORDERS	0.9222	4.1	3.0	1	25	13
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.3753	6.3	4.9	1	26	18
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.7290	4.0	3.0	1	25	12
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.5582	9.1	5.5	1	27	22
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.9151	9.9	6.9	1	28	23
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	0.9965	3.4	2.4	1	24	12
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2.5888	10.3	6.7	1	28	23
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8655	4.3	3.2	1	25	14
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	3.2183	10.3	5.0	1	26	21
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.8337	10.7	8.3	1	30	25
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.4232	4.9	4.2	1	25	13
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.7219	6.4	4.0	1	26	21
409	RADIOTHERAPY	1.0038	4.8	3.3	1	25	15
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	0.8841	3.1	2.4	1	18	8
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4476*	3.7	2.7	1	25	25
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.4515*	3.0	2.1	1	21	21
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.8757	9.8	6.5	1	28	23
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	1.0866	5.4	3.4	1	25	19
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.4192	12.6	8.4	1	30	25
416	SEPTICEMIA AGE >17	2.0101	7.8	6.0	1	27	22
417	SEPTICEMIA AGE 0-17	0.8077	4.8	3.8	1	25	13
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0437	6.0	4.5	1	26	19
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.9673	5.3	4.2	1	26	15
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.7386	3.9	3.3	1	20	10
421	VIRAL ILLNESS AGE >17	0.5837	3.3	2.6	1	19	9
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.4264	2.9	2.5	1	12	7
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.3569	6.7	4.8	1	26	21
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	1.8916	12.4	7.9	1	29	24
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	0.6505	5.1	3.3	1	25	19
426	DEPRESSIVE NEUROSES	0.7122	7.9	5.0	1	26	21
427	NEUROSES EXCEPT DEPRESSIVE	0.9057	9.9	5.8	1	27	22
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	1.2239	13.8	8.7	1	30	25
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.0617	9.2	7.8	1	29	24
430	PSYCHOSES	1.0857	10.9	7.7	1	29	24
431	CHILDHOOD MENTAL DISORDERS	1.2135	11.2	8.3	1	30	25
432	OTHER MENTAL DISORDER DIAGNOSES	1.2768	17.3	10.8	1	32	27
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.3072	3.9	2.5	1	24	13
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	0.9012	6.8	4.6	1	26	21
435	NO LONGER VALID	-	-	-	-	-	
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.0293	19.7	18.0	4	39	34
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.0689	14.3	11.0	1	32	27
438	NO LONGER VALID	-	-	-	-	-	

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
439	SKIN GRAFTS FOR INJURIES	1.2474	4.1	2.5	1	24	18
440	WOUND DEBRIDEMENTS FOR INJURIES	1.5522	6.5	4.4	1	26	21
441	HAND PROCEDURES FOR INJURIES	1.0300	2.7	2.0	1	17	8
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.7429	7.6	4.8	1	26	21
443	OTHER O.R PROCEDURES FOR INJURIES W/O CC	0.9699	3.2	2.3	1	23	10
444	TRAUMATIC INJURY AGE >17 W CC	0.8967	4.9	3.4	1	25	17
445	TRAUMATIC INJURY AGE >17 W/O CC	1.1373	4.8	2.6	1	24	19
446	TRAUMATIC INJURY AGE 0-17	0.5049	2.5	1.7	1	16	7
447	ALLERGIC REACTIONS AGE >17	0.4973	2.3	1.8	1	11	6
448	ALLERGIC REACTIONS AGE 0-17	0.4502	2.4	1.9	1	12	6
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.7867	2.9	2.1	1	19	8
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.4696	2.2	1.6	1	11	5
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.4144	2.0	1.6	1	9	5
452	COMPLICATIONS OF TREATMENT W CC	0.8960	4.6	2.9	1	24	16
453	COMPLICATIONS OF TREATMENT W/O CC	0.4525	2.7	2.1	1	15	7
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.9923	2.8	2.0	1	19	8
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3729	1.5	1.3	1	5	3
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2.1721*	10.2	5.2	1	27	27
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.6307*	5.6	3.0	1	25	25
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.4807	13.8	9.1	1	31	26
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	7.7532	15.6	6.1	1	28	23
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.9832	5.3	3.3	1	25	20
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.5004	7.0	3.0	1	24	19
462	REHABILITATION	2.3708	16.7	12.4	1	34	29
463	SIGNS & SYMPTOMS W CC	0.9203	5.2	3.5	1	25	18
464	SIGNS & SYMPTOMS W/O CC	0.6078	2.7	2.0	1	17	8
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.4464*	3.2	2.0	1	23	23
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.7077	5.5	3.0	1	25	20
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.3744	2.3	1.7	1	11	5
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.4274	8.0	4.8	1	26	21
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	-	-	-	-	-	
470	UNGROUPABLE	-	-	-	-	-	
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.9520	8.6	8.0	2	25	17
472	EXTENSIVE BURNS W O.R. PROCEDURE	11.6375*	30.4	15.9	1	38	38
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	7.1069	20.9	13.1	1	35	30
474	NO LONGER VALID	-	-	-	-	-	
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	4.7249	12.0	8.6	1	30	25
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.6064	8.1	5.0	1	26	21
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.3500	5.4	3.4	1	25	20
478	OTHER VASCULAR PROCEDURES W CC	2.7804	7.2	5.4	1	27	22
479	OTHER VASCULAR PROCEDURES W/O CC	1.8190	4.1	3.3	1	25	12
480	LIVER TRANSPLANT	-	-	-	-	-	
481	BONE MARROW TRANSPLANT	17.9068	34.6	30.4	4	52	47
482	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	4.1683	12.0	9.8	1	31	26
483	TRACHEOSTOMY EXCEPT FOR FACE,MOUTH & NECK DIAGNOSES	20.6684	41.2	31.6	2	53	48
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.9807*	20.2	12.5	1	35	35
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT T	6.0418	14.0	12.4	2	34	29
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.8223	12.5	8.8	1	30	25
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.7440	6.7	5.0	1	26	21
488	HIV W EXTENSIVE O.R. PROCEDURE	6.7339	16.5	12.9	1	34	29

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
489	HIV W MAJOR RELATED CONDITION	2.1454	9.1	6.1	1	28	23
490	HIV W OR W/O OTHER RELATED CONDITION	0.8407	4.4	3.6	1	25	13
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	1.8608	3.3	2.9	1	12	7
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	4.2977	14.1	6.3	1	28	23
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.6256	4.2	3.2	1	25	13
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0318	2.0	1.7	1	9	5
495	LUNG TRANSPLANT	12.8346*	26.3	20.2	1	42	42
600	NEONATE, DIED W/IN ONE DAY OF BIRTH	0.6365	1.0	1.0	1	1	1
601	NEONATE, TRANSFERRED <5 DAYS OLD	0.5581	1.5	1.3	1	3	3
602	NEONATE, BIRTHWT <750G, DISCHARGED ALIVE	23.1071	79.8	40.3	1	57	57
603	NEONATE, BIRTHWT <750G, DIED	6.2826	10.4	6.3	1	23	23
604	NEONATE, BIRTHWT 750-999G, DISCHARGED ALIVE	18.5732	65.6	48.2	1	65	65
605	NEONATE, BIRTHWT 750-999G, DIED	4.6541	6.0	4.7	1	21	21
606	NEONATE, BIRTHWT 1000-1499G, W SIGNIF OR PROC, DISCHARGED ALIVE	21.9571	74.5	65.2	11	82	82
607	NEONATE, BIRTHWT 1000-1499G, W/O SIGNIF OR PROC, DISCHARGED ALIV	7.6375	38.6	33.9	6	50	50
608	NEONATE, BIRTHWT 1000-1499G, DIED	6.9317	10.0	8.3	1	25	25
609	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W MULT MAJOR PROB	17.9722	59.3	58.4	30	75	75
610	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W/O MULT MAJOR PR	3.8729	25.4	21.5	2	38	38
611	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MULT MAJOR PR	7.9662	31.9	26.5	3	43	43
612	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MAJOR PROB	3.7943	20.0	15.9	1	32	32
613	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MINOR PROB	2.9418	18.8	15.9	2	32	32
614	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W OTHER PROB	1.5202	11.8	9.0	1	26	26
615	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	5.6201	21.0	18.0	2	35	35
616	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W/O MULT MAJOR PR	0.7364	8.0	4.5	1	21	21
617	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MULT MAJOR PR	5.5180	17.0	11.1	1	28	28
618	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MAJOR PROB	2.6452	11.7	9.2	1	26	26
619	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MINOR PROB	1.4414	9.1	7.3	1	24	24
620	NO LONGER VALID	-	-	-	-	-	
621	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.4018	3.6	2.8	1	10	10
622	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	8.8470	21.9	14.3	1	31	31
623	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W/O MULT MAJOR PROB	1.3568	6.5	4.4	1	21	21
624	NEONATE, BIRTHWT >2499G, W MINOR ABDOM PROCEDURE	0.7317	3.2	3.1	1	6	6
625	NO LONGER VALID	-	-	-	-	-	
626	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MULT MAJOR PROB	2.6533	9.4	6.5	1	23	23
627	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MAJOR PROB	0.9486	4.8	3.7	1	15	15
628	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MINOR PROB	0.5991	4.0	3.3	1	11	11
629	NO LONGER VALID	-	-	-	-	-	
630	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.1794	2.3	2.0	1	5	5
631	BPD AND OTH CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PE	5.9971	25.0	22.9	5	39	39
632	OTHER RESPIRATORY PROBLEMS AFTER BIRTH	0.5436	3.4	2.8	1	11	11
633	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	1.2079	8.5	7.7	1	24	24
634	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	0.4281	2.0	2.0	2	2	2
635	NEONATAL AFTERCARE FOR WEIGHT GAIN	0.2304	3.7	2.9	1	17	17
636	NEONATAL DIAGNOSIS, AGE > 28 DAYS	4.1653	11.8	6.7	1	23	23
900	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE <= 21 W/O	0.9816	14.2	9.1	1	31	26
901	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE > 21 W/O	0.6306	8.1	5.3	1	27	22

[FR Doc. 94-25339 Filed 10-12-94; 8:45 am]
BILLING CODE 5000-04-C

Office of the Secretary of Defense

Meetings; Defense Intelligence Agency Scientific Advisory Board

AGENCY: Defense Intelligence Agency Scientific Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: Tuesday and Wednesday 25–26 October 1994 (0830 to 1630).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C., 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, D.C. 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and and advise the Director, DIA, on related scientific and technical matters.

Dated: October 7, 1994.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 94–25340 Filed 10–12–94; 8:45 am]

BILLING CODE 5000–04–M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

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 179 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: 1 October 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 1 June 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:

BILLING CODE 5000–04–M

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

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)				
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	60	47	107	08-01-94
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

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
PUERTO RICO:				
BAYAMON				
05-01--12-14	$ 93	$ 73	$166	09-01-93
12-15--04-30	116	76	192	12-15-93
CAROLINA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
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--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
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--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
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. 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

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

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 US 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

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

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 conferernce and only for travelers staying at the El Conquistador Resort.

BILLING CODE 5000-04-C

Dated: October 7, 1994.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-25346 Filed 10-12-94; 8:45 am]

BILLING CODE 5000-04-M

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, 17 October 1994.

ADDRESSES: The meeting will be held at The Wyndham Franklin Plaza Hotel, Two Franklin Plaza, 17th and Race Streets, Salon #6, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group 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: October 7, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-25341 Filed 10-12-94; 8:45 am]

BILLING CODE 5000-04-M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, October 18, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group 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: October 7, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 94–25342 Filed 10–12–94; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, November 9, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron device.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group 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: October 7, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–25343 Filed 10–12–94; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 15 November 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group 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: October 7, 1994.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 94–25344 Filed 10–12–94; 8:45 am]

BILLING CODE 5000–04–M

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System.

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) Oversight Committee will convene Thursday, November 3, 1994, from 8:00 a.m. to 5:00 p.m. The meeting will be held at the Woodmark Hotel in Kirkland, Washington. The preliminary agenda is as follows:

Opening/Administrative Remarks
Review May 19, 1994 Meeting Summary
TSP Program Office Update
Prime Vendor to Subcontractor Reconciliation
NCS Emergency Response Training Update
Washington State Emergency Services Overview
Cellular Priority Access Discussion
TESP Update
OMNCS NII Activity Update
Old Business/New Business

Anyone interested in attending or presenting additional information to the Committee, please contact Bill Abrams, NCS, (703) 607–4930 by October 15, 1994.

Dated: October 7, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–25345 Filed 10–12–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Logistics Agency

Privacy Act of 1974; Notice to add a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to add a record system.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition will be effective without further notice on November 14, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Sales at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to

the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

A proposed system report, as required by 5 U.S.C. 552a(5) of the Privacy Act was submitted on September 30, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994).

Dated: October 6, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S300.10 CAH

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Records are maintained by the personnel offices of the Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave transfer program as either a donor or a recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, the status of that hardship, and a statement that selected data elements may be used in soliciting donations.

The file may also contain medical or physician certifications and agency approvals or denials.

Donor records include the individual's name, organization, office telephone number, Social Security Number, position title, grade, and pay level, leave balances, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6331 et seq. (Leave); 10 U.S.C. 136 (Assistant Secretaries of Defense); E.O. 9397 (SSN); and 5 CFR Part 630.

PURPOSE(S):

The file is used in managing the DLA Voluntary Leave Transfer program. The recipient's name, position data, organization, and a brief hardship description are published internally for passive solicitation purposes. The Social Security Number is sought to effectuate the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness; where leave donor and leave recipient are employed by different Federal agencies, to the personnel and pay offices of the Federal agency involved to effectuate the leave transfer.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel offices of the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–25348 Filed 10–12–94; 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974; Notice to Add a System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to add a system of records

SUMMARY: The Defense Logistics Agency proposes to add an exempt system of records to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on November 14, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative

Management Division, Programs and Analyses Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above address.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 30, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994).

Dated: October 6, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S100.10 GC

SYSTEM NAME:

Whistleblower Complaint and Investigation Files.

SYSTEM LOCATION:

Office of General Counsel, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100.

General Counsel Offices at the Defense Logistics Agency Primary Level Field Activities (DLA PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints of whistleblower reprisal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain complainant's name, address, Social Security Number, telephone number, and information on the nature of the complaint. The system may also contain investigative reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1211–1219 (Whistleblower Protection Act of 1989); 10 U.S.C. 136 (Assistant Secretaries of Defense); 10 U.S.C. 2409a (Defense Appropriations Act); E.O. 9397 (SSN); and DLA Regulation 5500.9.

PURPOSE(S):

To provide a record of whistleblower complaints and their disposition.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

3In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a combination of paper and automated form.

RETRIEVABILITY:

Records are retrieved by complainant's name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties.

The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Records will be retained until final disposition authority has been established by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100.

General Counsel Office at the DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer of the DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer of the DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer of the DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject, witnesses, and investigators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under 5 U.S.C. 552a(k)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and is published at 32 CFR part 323. For more information, contact DASC-RP, Cameron Station, Alexandria, VA 22304–6100.

[FR Doc. 94–25349 Filed 10–12–94; 8:45 am]

BILLING CODE 5000–04–F

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Warfare Innovations Task Force will meet on November 9-10, 1994, from 9:00 a.m. to 4:00 p.m., on each day at 4401 Ford Avenue, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of the meeting is to conduct discussions on naval warfare innovations in the areas of new technology, current research, development, and acquisition practices and integration of new technology into the fleet. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: October 6, 1994

L.R. McNees

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-25330 Filed 10-12-94; 8:45 am]

BILLING CODE 3810-AE-F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Strategies for an Uncertain Future Task Force will meet on November 1-2, 1994, from 9:00 a.m. to 4:00 p.m., on each day at 4401 Ford Avenue, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of the meeting is to conduct discussions of key areas regarding strategies for an uncertain future to include current contingency planning, current intelligence, information warfare, and special access programs. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: October 6, 1994

L.R. McNees

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-25331 Filed 10-12-94; 8:45 am]

BILLING CODE 3810-AE-F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet on October 26-27, 1994, from 8:30 a.m. to 3:30 p.m., on October 26, 1994, and 9:00 a.m. to 4:00 p.m., on October 27, 1994, at 4401 Ford Avenue, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of the meeting is to conduct discussions of key areas regarding current intelligence, fleet operations, new technologies, information warfare, and naval innovations. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: October 6, 1994

John T. Oliver

CDR, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 94-25332 Filed 10-12-94; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by October 17, 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, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: October 6, 1994.

Ingrid Kolb

Acting Director, Information Resources Management Service.

Office of Intergovernmental and Interagency Affairs

Type of Review: Expedited.

Title: New Applications for the Presidential Scholars Program

Abstract: This form will be used by State Educational agencies to apply for funding under the Presidential Scholars Program. The Department will use the information to make grant awards.

Additional Information: Clearance for this information collection is requested for October 17, 1994. An expedited review is requested to maintain the contract schedule. The Department of Education is to supply a package of candidacy materials to the contractor

upon award of the contract at the Baseline Management Plan meeting.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting Burden: Responses: 2,600; Burden Hours: 41,600.

Recordkeeping Burden: Recordkeepers: 0, Burden Hours: 0.

[FR Doc. 94–25249 Filed 10–12–94; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 14, 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: October 6, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Strengthening Institutions Program Continuation Application.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 250; Burden Hours: 3,750.

Recordkeeping Burden: Recordkeepers: 0, Burden Hours: 750.

Abstract: Under the Strengthening Institutions Program, eligible institutions of higher education that are recipients of multi-year projects report project accomplishments to date and submit their requests for noncompetitive continuation of Federal funds. Staff review the information and budgets to assess substantial progress towards project objectives and to determine the amount of grant funds to support subsequent budget periods.

[FR Doc. 94–25250 Filed 10–12–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA NO.: 84.200]

Graduate Assistance in Areas of National Need Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995.

Purpose of program: This program provides fellowships through academic departments and programs of institutions of higher education to assist graduate students of superior ability who demonstrate financial need. The purpose of the program is to sustain and enhance the capacity for teaching and research in areas of national need.

Eligible applicants: An academic department of an institution of higher education that meets the requirements in 34 CFR 648.2.

Deadline for Transmittal of Applications: December 2, 1994.

Deadline for Intergovernmental Review: February 2, 1995.

Applications Available: October 19, 1994.

Available Funds: $11,080,188.

Estimated Range of Awards: $100,000–$750,000.

Estimated Average Size of Awards: $224,609.

Estimated Number of Awards: 50

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 648.

SUPPLEMENTARY INFORMATION: The Graduate Assistance in Areas of National Need Program furthers the National Education Goals that call for U.S. students to be first in the world in science and mathematics achievement, and that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers both goals by providing fellowship assistance to increase the number of graduate students who complete doctoral degrees in mathematics, science, and engineering, as well as teachers with a substantive background in mathematics and science. The program also furthers these goals by providing fellowship assistance to graduate students so that these students can provide an example for American youth on the importance of continued learning throughout an individual's life. *Stipend level:* The Secretary has determined that the maximum fellowship stipend for the academic year 1995–1996 is $14,400, which is equal to the level of support that the National Science Foundation is providing for its graduate fellowships.

Institutional payment: The institutional payment for academic year 1994–1995 was $9,243. The Secretary will adjust the institutional payment for academic year 1995–1996 prior to the issuance of grant awards based on the Department of Labor's determination of the Consumer Price Index for 1994.

Priorities

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 648.3, the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only

applications that meet one or more of these absolute priorities:

Applications that propose to provide fellowships in one or more of the following areas of national need: Biology, Chemistry, Computer and Information Sciences, Engineering, Mathematics, and Physics.

FOR APPLICATIONS OR INFORMATION CONTACT: Dr. John E. Bonas, U.S. Department of Education, Division of Higher Education Incentive Programs, 600 Independence Avenue, S.W., Portals Building, Suite C80, Washington, D. C. 20202–5329. Telephone: (202) 260–3265; Internet address: JOHN_BONAS@ED.GOV; Fax: (202) 260–7615. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Program authority: 20 U.S.C. 1134l–1134q–1.

Dated: October 6, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–25288 Filed 10–12–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Savannah River Operations Office; Financial Assistance Award; Intent to Award a Noncompetitive Cooperative Agreement

AGENCY: Savannah River Operations Office, DOE.

ACTION: Notice.

SUMMARY: The DOE announces that it plans to award a renewal cooperative agreement to the University of South Carolina-Aiken (USC–A), 171 University Parkway, Aiken, SC 29801. The cooperative agreement entitled, "Operation and Maintenance of a Public Reading Room," will be extended five years through October 25, 1999, with DOE support of of $414,349, and cost sharing of $14,855 for the period. Funds of $76,982 will be obligated for the first twelve-month budget period. Pursuant to Section 10 CFR Part 600.7(b)(2)(i)(A) of the DOE Assistance Regulations (10 CFR 600), DOE has determined that a noncompetitive modification is appropriate since the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Martin, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2191.

SUPPLEMENTARY INFORMATION: *Procurement Request Number:* 09–95SR18117.001.

Project Scope: Under this cooperative agreement, USC–A will provide facilities, services and staff to continue management and operation of a public reading room as a part of their library to house DOE documents and allow access to the general public to certain Departmental documents. USC–A will continue to assist the public in selecting desired materials, provide copying facilities, and make information relative to DOE and its facilities and programs available to the general public.

Issued in Aiken, South Carolina, on: September 22, 1994.

Robert E. Lynch,

DOE Savannah River Operations Office, Head of Contracting Activity, Designee.

[FR Doc. 94–25361 Filed 10–12–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG94–105–000, et al.]

The New World Power Company (Dyffryn Brodyn) Limited, et al.; Electric Rate and Corporate Regulation Filings

October 5, 1994.

Take notice that the following filings have been made with the Commission:

1. The New World Power Company (Dyffryn Brodyn) Limited

[Docket No. EG94–105–000]

On September 30, 1994, The New World Power Company (Dyffryn Brodyn) Limited filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The New World Power Company (Dyffryn Brodyn) Limited is a wholly owned subsidiary of The New World Power Company Limited, a developer of projects in countries other than the United States that generate electricity from renewable resources. The New World Power Company (Dyffryn Brodyn) Limited will be engaged directly and exclusively in the business of owning and operating a 5.6 MW wind farm located near Whitland, Dyfed, Wales, and selling electricity at wholesale.

Comment date: October 20, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. The New World Power Company (4 Burrows) Limited

[Docket No. EG94–106–000]

On September 30, 1994, The New World Power Company (4 Burrows) Limited, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The New World Power Company (4 Burrows) Limited, is a wholly owned subsidiary of The New World Power Company Limited, a developer of projects that generate electricity from renewable resources in countries other than the United States. The New World Power Company (4 Burrows) Limited, will be engaged directly and exclusively in the business of owning and operating a 4.5 MW wind farm at 4 Burrows, near Truro, Cornwall, England and selling electricity at wholesale.

Comment date: October 20, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. The New World Power Company Limited

[Docket No. EG94–107–000]

On September 30, 1994, The New World Power Company Limited, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The New World Power Company Limited will be engaged, directly or indirectly through one or more affiliates, exclusively in the business of owning and/or operating one or more eligible facilities as defined in Section 32 of the Public Utility Holding Company Act of 1935 and selling electricity at wholesale.

Comment date: October 20, 1994, in accordance with Standard Paragraph E

at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. The New World Power Company (Caton Moor) Limited

[Docket No. EG94–108–000]

On September 30, 1994, The New World Power Company (Caton Moor) Limited filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The New World Power Company (Caton Moor) Limited is a wholly owned subsidiary of The New World Power Company Limited, a developer of projects that generate electricity from renewable resources in countries other than the United States. The New World Power Company (Caton Moor) Limited will be engaged directly and exclusively in the business of owning and operating a 3 MW wind farm located at Caton Moor, Caton-with Littledale, Lancashire, England, and selling electricity at wholesale.

Comment date: October 20, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Midwest Power Systems Inc.

[Docket No. ER94–985–000]

Take notice that on October 4, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing Amendment No. 2 to the filing of an Electric Interchange and Interconnection Agreement (Agreement) dated January 24, 1994 between Indianola Waterworks and Electric Light & Power Board of Trustees (Indianola) and MPSI. The Agreement, which replaces a 1989 Electric Interchange Agreement, establishes the rights and obligations of the parties with respect to their interconnecting facilities and the coordinated operation of their systems.

Amendment No. 2 contains additional support data and information.

The Agreement is effective upon acceptance by the Commission and remains in effect for an initial ten (10) years.

MPSI states that copies of this filing were served on Indianola and the Iowa Utilities Board.

Comment date: October 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. ER94–1401–000]

Take notice that PSI Energy, Inc. (PSI), on September 30, 1994, tendered for filing a Certificate of Concurrence between PSI and Louis Dreyfus Electric Inc. (Dreyfus).

Copies of the filing were served on Louis Dreyfus Electric Power Inc., Connecticut Department of Public Utility Control and the Indiana Utility Regulatory Commission.

Comment date: October 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER94–1421–001]

Take notice that on September 14, 1994, Southern California Edison Company submitted supplemental information regarding its filing in the above captioned docket in accordance with Ordering Paragraph C of the Commission's August 30, 1994, Order Asserting Jurisdiction, Noting Interventions, Granting Waiver, Suspending Filing and Establishing Hearing Procedures.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER94–1461–000]

Take notice that on August 10, 1994, Tucson Electric Power Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: October 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER94–1461–000]

Take notice that on August 17, 1994, Nevada Power Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: October 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota Company)

[Docket No. ER94–1622–000]

Take notice that on September 29, 1994, Northern States Power Company (Minnesota) [NSP–MN] tendered for filing an amendment to its original filing of the Interconnection and Interchange Agreement dated September 17, 1993, between NSP–MN, Northern States Power Company (Wisconsin) [NSP–WI], and Upper Peninsula Power Company [UPP]. As with the original filing, NSP–MN files this amendment to filing on behalf of NSP–WI, UPPI, and itself.

The Interconnection and Interchange Agreement provides for the interchange of electrical power and energy between the parties as well as for possible future interconnected electrical operation between the parties' systems. In the original filing the Commission was requested to accept the agreement for filing effective November 1, 1994. This amendment to filing changes the requested effective date to October 1, 1994.

Comment date: October 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER94–1647–000]

Take notice that on September 14, 1994, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Wabash Valley Power Association and Virginia Power, dated August 15, 1994, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Wabash Valley Power Association under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: October 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Oklahoma Gas and Electric Company

[Docket No. ES94–44–000]

Take notice that on September 30, 1994, Oklahoma Gas and Electric Company filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $400 million of short-term debt securities from time to time through December 31, 1996, with a final maturity date no later than December 31, 1997.

Comment date: October 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. U.S. Department of the Navy

[Docket Nos. QF85–287–001 and EL94–70–000]

On September 2, 1994, the U.S. Department of the Navy (Navy) tendered for filing an amendment to its filing in these dockets.

The amendment pertains to information relating to Navy's Petition For Temporary Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA).

Comment date: October 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. University Cogeneration, Inc.

[Docket Nos. QF86–529–003 and EL94–76–000]

On September 28, 1994, University Cogeneration, Inc. (Applicant), tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the natural gas and electric energy rates associated with the operation of Applicant's cogeneration facility

Comment date: October 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Newark Bay Cogeneration Partnership, L.P.

[Docket Nos. QF86–1014–006 and EL94–27–000]

On September 30, 1994, Newark Bay Cogeneration Partnership, L.P. (Newark Bay) tendered for filing an amendment to its filing in these dockets.

The amendment pertains to information relating to Newark Bay's Petition For Temporary Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA).

Comment date: October 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 the comment date. 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. 94–25324 Filed 10–12–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP92–185–003, CP93–261–002, and CP92–151–004]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1994.

Take notice that on September 30, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, the following tariff revised tariff sheets, with an effective date of November 1, 1994:

Fourth Revised Volume No. 1

Eighth Revised Tariff Sheet No. 21
Eighth Revised Tariff Sheet No. 22

Original Volume No. 2

Third Revised Tariff Sheet No. 431

Algonquin states that the purpose of this filing is to implement the initial rates authorized in the Commission's orders of July 16, 1993 in Docket Nos. CP92–185–000, *et al.*, June 21, 1994 in Docket Nos. CP93–261–000, *et al.*, and October 29, 1993 in Docket No. CP92–151.

Algonquin states that copies of its filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protests should be filed on or before October 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public consideration.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25261 Filed 10–12–94: 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–70–005 and CP87–198–004]

Black Marlin Pipeline Co.; Compliance Filing

October 6, 1994.

Take notice that on October 3, 1994, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Third Revised Sheet No. 95

On July 20, 1994, the Commission issued a letter Order approving the Stipulation and Agreement in Full Settlement of the Rate Proceedings in Docket No. RP93–70 wherein authorization was received to convert the firm transportation service for Union Carbide from the Section 7(c) transportation service under Rate Schedule T–1 to the Part 284 firm transportation service under Rate Schedule FTS.

Black Marlin states that this tariff sheet also reflects the elimination of the transportation services rendered to Humble Gas Transmission Company and Brandywine Industrial Gas, Inc. pursuant to their respective Orders received in Docket Nos. CP87–198 and CP88–140 wherein the Commission limited the term of transportation to the earlier of one year or until Black Marlin accepted a blanket certificate under § 284.221 of the Commission's Regulations. The effective date of this tariff sheet being filed herein is September 1, 1994, the initial delivery date of the Part 284 transportation service for Union Carbide under Rate Schedule FTS.

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 § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 14, 1994. Protests will be considered by the Commission in determining the appropriate actions 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 public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25262 Filed 10–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1450–000]

Coastal Electric Services Co.; Issuance of Order

October 6, 1994.

On July 13, 1994 and August 15, 1994, Coastal Electric Services Company (Coastal) submitted for filing a rate schedule under which Coastal will engage in wholesale electric power and energy transactions as a marketer. Coastal also requested waiver of various Commission regulations. In particular, Coastal requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Coastal.

On September 29, 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 Coastal 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 Practices and Procedure (18 CFR 385.211 and 385.214).

Absent to request for hearing within this period, Coastal 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 Coastal'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 October 31, 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. 94–25263 Filed 10–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1488–000]

Continental Energy Services, Inc., Issuance of Order

October 6, 1994.

On July 25, 1994 and August 19, 1994, Continental Energy Services, Inc. (Continental) submitted for filing a rate schedule under which Continental will engage in wholesale electric power and energy transactions as a marketer. Continental also requested waiver of various Commission regulations. In particular, Continental requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Continental.

On September 29, 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 Continental 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, Continental 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 Continental'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 October 31, 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. 94–25264 Filed 10–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–295–001]

Gasdel Pipeline System, Inc.; Compliance Filing

October 6, 1994.

Take notice that on October 4, 1994, Gasdel Pipeline System, Inc. (Gasdel) tendered for filing to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets effective October 1, 1994:

Third Revised Sheet No. 5
First Revised Sheet No. 11
First Revised Sheet No. 12
First Revised Sheet No. 24
First Revised Sheet No. 27
First Revised Sheet No. 31
First Revised Sheet No. 40
First Revised Sheet No. 44

Gasdel states that the purpose of this filing is to comply with the Commission's September 30, 1994, Letter Order in Docket No. RP94–295–000.

Gasdel states that copies of the filing have been mailed to all parties to this proceeding and to Gasdel's customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protests should be filed on or before October 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25265 Filed 10–12–94; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. TM91–6–37–004]

Northwest Pipeline Corporation; Compliance Filing and Refunding Report

October 6, 1994.

Take notice that on October 3, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing with the Federal Energy Regulatory Commission (Commission) revised annual fuel reimbursement percentages and a refund report in the above referenced docket.

Northwest states that the purpose of this filing is to comply with the

Commission's Order Granting Rehearing in Part issued October 8, 1993 in Docket Nos. TM91–6–37–001 and TM92–7–37–000 and other related orders, as explained in Northwest's filing, which require Northwest to file revised annual fuel reimbursement percentages for the 24-month period ended March 31, 1993, to make refunds by October 6, 1994 to its Rate Schedules TF–1 and TI–1 customers for the fuel reimbursements amounts they were overcharged and to file a refund report with the Commission by October 21, 1994.

Northwest states that a copy of this filing has been served upon each of Northwest's current or former affected jurisdictional customers, all intervenors in Docket Nos. TM91–6–37–003 and TM92–7–37–002, and upon affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 94–25266 Filed 10–12–94; 8:45 am]

BILLING CODE 6716–01–M

Federal Energy Regulatory Commission

[Docket No. RP93–147–006]

Tennessee Gas Pipeline Co.; Revised Tariff Filing

October 6, 1994.

Take notice that on September 30, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised Tariff sheets to Rate Schedule FS effective November 1, 1994:

First Revised Sheet No. 94
First Revised Sheet No. 95
Original Sheet No. 95A
Original Sheet No. 95B
First Revised Sheet Nos. 96–101
First Revised Sheet No. 526
First Revised Sheet No. 530

As agreed in the Stripulation and Agreement filed on July 26, 1994, in Docket Nos. RP93–147 *et. al.* (the July S&A), Tennessee is filing tariff revisions to implement excess deliverability provisions in the FS Rate Schedule effective November 1, 1994, the commencement of the withdrawal season. Tennessee states that this filing is made in conjunction with and is conditioned upon anticipated Commission approval of the July S&A.

In accordance with Article II of the July S&A, Tennessee is revising the FS Rate Schedule to resolve the issues raised in Docket No. RP91–203 (Phase II) concerning access/allocation relating to excess deliverability. The new tariff sheets specify the terms and conditions under which FS customers electing increased withdrawal rights can utilize excess deliverability. The sheets provide ratchet limits on withdrawal rights, minimum inventory requirements, and monthly limits on excess withdrawals. The revised sheets also provide for conversion of DDS service under Rate Schedule LMS–MA to storage service under Rate Schedule FS and specify the transfer price from inventory gas applicable to conversions during Tennessee's restructuring in accordance with the July Stipulation and Agreement.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., 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 October 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc 94–25267 Filed 10–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–52–000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

October 6, 1994.

Take notice that on October 3, 1994, Western Gas Interstate Company, (Western), pursuant to Section 4 of the Natural Gas Act, the Commission's regulations thereunder and Western's FERC Gas Tariff, tendered for filing proposed changes to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date for the tariff sheets are October 1, 1994.

Western states that, its filing proposes changes to its rates in accordance with the terms of the Annual Charge Adjustment Clause of its FERC Gas Tariff.

Western states that the tariff sheet proposed to become effective October 1, 1994, is to account for the decrease in Western's Annual Charge Adjustment (ACA). The adjustment of the ACA Surcharge is determined each fiscal year, and reflects a decrease of $0.0002/dth from the currently effective ACA Surcharge.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene 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 and Regulations. All such motions or protests should be filed on or before October 14, 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. 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. 94–25268 Filed 10–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–2–000]

Williams Natural Gas Co.; Compliance Filing

October 6, 1994.

Take notice that on October 3, 1994, Williams Natural Gas Company (WNG) tendered for filing its report on storage operations in compliance with the Commission's orders in Docket Nos. RS92–12–000, *et al.*[1]

WNG states that the purpose of this filing is to file its required study of storage facilities and operations. WNG states that all volume data is at 14.65 psia unless otherwise noted.

WNG states that a copy of this filing is being served on all firm storage customers and affected state regulatory commissions.

[1] Williams Natural Gas Company, March 17, 1993 (62 FERC ¶ 61,261) and August 2, 1993 (64 FERC ¶ 61,165).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before October 26, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary,

[FR Doc. 94–25269 Filed 10–12–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5090–47]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 14, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Applications for "Preauthorization of a CERCLA Response Action" and "Claim for CERCLA Response Action" (EPA ICR #1304.04; OMB #2050–0106). This ICR requests renewal of the existing clearance.

Abstract: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and as amended in 1986, establishes broad Federal authority to undertake removal and remedial actions in response to releases or threats of releases of hazardous substances and certain pollutants and contaminants into the environment. One of the uses of the Hazardous Substance Superfund (the Fund), which is authorized under CERCLA, is the payment of claims for necessary response costs.

Under section 111(a)(2) of CERCLA, claimants are authorized to be reimbursed from the Fund for necessary response costs incurred as a result of carrying out the National Oil and Hazardous Substances Pollution Contingency Plan. In addition, section 122(b)(1) of CERCLA delegates to EPA the authority to enter into agreements with potentially responsible parties (PRPs) to allow the PRPs to perform a preauthorized phase of a response action in return for reimbursement of an agreed-on portion of response costs from the Fund. Section 112(b)(1) of CERCLA authorizes EPA to prescribe the appropriate forms and procedures for the filing of response claims against the Fund. All proposed response actions must be approved in advance by EPA through the preauthorization process in order for a subsequent claim to be awarded.

The information required by the application and claim forms is essential for EPA to adequately review and evaluate the merits and validity of a response claim, and to make a decision on whether to award that claim from the Fund. The information and data submitted by applicants under the nine sections of the application for preauthorization will be used by the Agency to make a determination on whether to approve in advance a proposed response action under the preauthorization process. The subsequent information submitted to EPA on the claim form will be used to determine whether or not to award the claim. In its role as manager of the Fund, this information allows EPA to ensure appropriate uses of Fund resources, meet cost control and budget requirements, protect against potential waste and fraud, and ensure that the proposed response actions themselves do not create environmental hazards.

Burden Statement: The estimated annual public reporting burden for the "Application for Preauthorization of a CERCLA Response Action" is estimated to average 258 hours per response. These burden estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining needed data, and completing and reviewing the collection of information.

Public reporting burden for the "Claim for CERCLA Response Action" is estimated to average 44 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining needed data, and completing and reviewing the collection of information. In addition, claimants awarded money from the Fund will be required to maintain their records for a 10 year period. It is estimated that it will require those claimants an average of 15 workhours per year to maintain their records.

Respondents: Preauthorization requests and response claims may be submitted by individuals, private entities, foreign entities, or PRPs (including States or local governments).

Estimated Number of Respondents: 34 (10 preauthorization requests, and 24 claim submitters).

Estimated Number of Responses per Respondent: 1.

Frequency of Collection: On occasion—only when an applicant/claimant seeks reimbursement for response costs from the fund.

Estimated Total Annual Burden on Respondents: 4,000 hours.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, S.W., Washington, D.C. 20460;

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Washington, D.C. 20530.

Dated: October 6, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–25384 Filed 10–12–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5090–3]

Proposed Settlement Under Section 122(h) of Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve the past liability of one party for costs incurred by EPA at the Radium Chemical Company Superfund Site.

DATES: Comments must be provided on or before November 14, 1994.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, Room 437, 26 Federal Plaza, New York City, New York, 10278 and should refer to: In Re: The Radium Chemical Company Superfund Site in Woodside, Queens, New York, U.S. EPA Index No. II CERCLA–94–0214.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, Room 437, 26 Federal Plaza, New York City, New York, 10278, (212) 264–5342, Attention: George A. Shanahan.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Radium Chemical Company Superfund Site in Woodside, Queens, New York. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States. The A&Y Realty Corp. is the party committed to participate in this settlement through the sale of real property, the majority of the proceeds of which are to be remitted to the United States in settlement of its claims against A&Y Realty Corp. with respect to the Radium Chemical Company Superfund Site. This proposed settlement represents a compromise of EPA's total response costs. There are other parties potentially responsible for EPA response costs that are not party to the proposed settlement agreement.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New York/Caribbean Superfund Branch, Room 437, 26 Federal Plaza, New York City, New York, 10278.

Dated: September 28, 1994.

Kathleen C. Callahan,

Director, Emergency and Remedial Response Division.

[FR Doc. 94–25385 Filed 10–12–94; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–51839; FRL–4916–8]

Certain Chemicals Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notices (PMNs) P–94–1799, P–94–1800, and P–94–1801, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on December 27, 1994.

FOR FURTHER INFORMATION CONTACT: Dave Schutz, New Chemicals Branch, Chemical Control Division (7405), Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202) 260–8994.

SUPPLEMENTARY INFORMATION: On July 1, 1994, EPA received PMNs P–94–1799, P–94–1800, and P–94–1801 for three substances, identified as 1-amino-2-butanol; 1,1' aminodi-2-butanol; and 1,1',1'' Nitrilotri-2-butanol. The submitter claimed as confidential business information: The production volume, manufacturing process information, and some other information. Notice of receipt of the premanufacture notice has not yet been published in the **Federal Register**. The original 90–day review period under section 5(a)(1) of the TSCA was scheduled to expire on September 28, 1994. With this extension under section 5(c) of the TSCA, the 90–day review period is now scheduled to expire on December 27, 1994.

Based on its analysis, EPA finds that there is a possibility that the substances submitted for review in these PMNs may be regulated under TSCA. The PMN substances appear to meet the Agency's exposure-based criteria under section 5(e)(1)(A)(ii)(II) in that there may be substantial human exposure to these substances in the form of chronic inhalation by a large number of workers. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to December 27, 1994. The PMN substances will be reevaluated once data are received.

PMNs are available for public inspection in the TSCA Nonconfidential Information Center (NCIC), Rm. NE-B607, EPA headquarters, 401 M St., SW., Washington, DC, from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: September 28, 1994.

Charles M. Auer,

Director Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–25383 Filed 10–12–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before December 12, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: New Collection.

Title: National Fire Academy Long-Term Course Evaluation Forms.

Abstract: The National Fire Academy's long-term evaluation

forms—one for students and one for the student's supervisor—will obtain course specific feedback regarding impact of course content on job performance. This information is needed to improve instruction and content. Demographic data are needed to identify differentials in course impact.

Type of Respondents: Individuals and households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,634 hours.

Number of Respondents: 7,672.

Estimated Average Burden Time per Response: Student evaluation form 15 minutes; Supervisor evaluation form 10 minutes.

Frequency of Response: Other—three months after completion of a specific course.

Dated: October 4, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–25364 Filed 10–12–94; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before December 12, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Reinstatement of 3067–0100.

Title: Field Reporting System.

Abstract: The integrated field reporting system (FRS) is an automated system structured to emulate the projection and reporting cycle of training programs for Emergency Management Training; SARA Title II, Section 305(a); and Chemical Stockpile Emergency Preparedness Program (CSEPP), which utilizes a system known as Computer Assisted Training Information System (CACTIS). The system is designed to provide States with the automated capabilities to prepare work plans required by the comprehensive cooperative agreement (CCA); to capture, store, and retrieve detailed course and participant data; and to satisfy multiple management information and reporting requirements at the State, regional, and national levels.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: Training-3,728 hours, Pilot testing-32 hours; Installation of automated system-496 hours; Full implementation, including annual training-1,740 hours.

Number of Respondents: Training of 104 State Training Officers and Exercise Training Officers; Pilot testing in 4 States; Installation at 56 State and territory offices and 10 FEMA regional offices; Full implementation in 56 States and territories.

Estimated Average Burden Time per Response: Full implementation, including annual training-31 hours.

Frequency of Response: Annually and quarterly.

Dated: October 4, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–25365 Filed 10–12–94; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Banque Nationale de Paris, Paris, France; Application to Engage in Nonbanking Activities

Banque Nationale de Paris, Paris, France (BNP), has 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)), through a newly-formed wholly-owned subsidiary, BNP/Cooper Neff, Inc., Radnor, Pennsylvania (Company), to acquire certain assets and liabilities of Mitsui T&B Options, Inc., New York, New York, Cooper Neff & Associates, L.P., Radnor, Pennsylvania, and Cooper Neff Technologies, L.P., Radnor, Pennsylvania, and to engage in the following activities: 1) providing full-service securities brokerage services; 2) providing investment advisory services; 3) proprietary trading in futures and exchange-traded and over-the-counter options on foreign exchange for hedging and nonhedging purposes; 4) acting as a registered options trader on the Philadelphia Stock Exchange with respect to options on the Australian dollar, British pound, Canadian dollar, Deutsche mark, European Currency Unit, French franc, Japanese yen, and Swiss franc; 5) acting as a specialist on the Philadelphia Stock Exchange with respect to the Australian dollar, European Currency Unit, and French franc; 6) selling computer software consisting of pricing and risk management models, and providing related support services; and 7) providing futures commission merchant (FCM) and commodity trading advisor services, including executing, buying and selling through omnibus accounts, and offering investment advisory services (including discretionary portfolio management), with respect to futures and options on futures on bullion, government securities, certificates of deposit, other money market instruments that a bank may buy and sell for its own account, bonds, interest rates, and financial indexes on exchanges previously approved by the Board. Company would not provide FCM services with respect to foreign currency contracts. BNP also has applied pursuant to section 4(c)(8) of the BHC Act, to acquire Mitsui T&B Futures, Inc., Chicago, Illinois (to be renamed BNP Futures, Inc.), and to provide FCM clearing-only services with respect to those contracts for which Company would provide execution and advisory services. BNP would engage in these activities on a worldwide basis.

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 generally have 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 (1984).

BNP states that the Board previously has determined by Regulation that certain of the proposed activities, when conducted within limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(15) (full-service securities brokerage); 12 CFR (b)(4) (investment advisory services); 12 CFR 225.25(b)(7), *Citicorp*, 72 Federal Reserve Bulletin 497 (1986), and *Citicorp*, 68 Federal Reserve Bulletin 505 (1982) (data processing services).

BNP also maintains that the Board has determined by order that several of the other proposed activities, when conducted within the limitations established by the Board in previous orders, are closely related to banking. *See Sakura Bank, Limited*, 79 Federal Reserve Bulletin 723 (1993) (providing execution-only, clearing-only, and investment advisory services, and buying and selling contracts through omnibus accounts, with respect to financial futures and options on futures); *Hongkong and Shanghai Banking Corporation*, 75 Federal Reserve Bulletin 217 (1989), and *Nippon Credit Bank, Ltd.*, 75 Federal Reserve Bulletin 308 (1989) (proprietary trading of futures and options on foreign exchange for nonhedging and hedging purposes); *Swiss Bank*, 77 Federal Reserve Bulletin 126 (1991), and *Societe Generale*, 76 Federal Reserve Bulletin 776 (1990) (acting as a specialist and registered options trader on the Philadelphia Stock Exchange). BNP maintains that Company and BNP Futures, Inc. would conduct these previously approved activities in conformance with the conditions and limitations established by the Board in prior cases.In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company and BNP Futures, Inc. "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." 12 U.S.C. § 1843(c)(8). BNP believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, BNP maintains that the proposal will enhance competition and enable BNP to offer its customers a broader range of products. In addition, BNP states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

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 7, 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 San Francisco.

Board of Governors of the Federal Reserve System, October 5, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–25273 Filed 10–12–94; 8:45 am]

BILLING CODE 6210–01–F

Chemung Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 4, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Chemung Financial Corporation and Chemung Acquisition, Inc., both of Elmira, New York; to acquire 100 percent of the voting shares of Owego National Financial Corporation, Owego, New York, and thereby indirectly acquire Owego National Bank, Owego, New York. In connection with this application, Chemung Acquisition, Inc., has applied to become a bank holding company.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Community First Financial, Inc., Maysville, Kentucky; to merge with Grant Bancshares, Inc., Dry Ridge, Kentucky, and thereby indirectly acquire Citizens Bank, Dry Ridge, Kentucky.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Randall Holding Co., Inc., Randall, Minnesota; to become a bank holding company by acquiring 90 percent of the

voting shares of Randall State Bank, Randall, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National of Colorado, Inc., Omaha, Nebraska; to acquire 100 percent of the voting shares of Union Colony Bancorporation, Inc., Greeley, Colorado, and thereby indirectly acquire Union Colony Bank, Greeley, Colorado.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Casey Bancorp, Inc., Grand Prairie, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Grand Prairie State Bank, Grand Prairie, Texas.

Board of Governors of the Federal Reserve System, October 5, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–25274 Filed 10–12–94; 8:45 am]

BILLING CODE 6210–01–F

Jack Lowell Easter, 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 October 31, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Jack Lowell Easter, Spencer, Iowa; to acquire 17.10 percent of the voting shares of Easter Enterprises, Inc., Altoona, Iowa, and thereby indirectly acquire Farmers Trust & Savings Bank, Spencer, Iowa.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Martha C. Fricke, Ashland, Nebraska; to acquire 47.24 percent of the voting shares of Cook Investment, Inc., Beatrice, Nebraska, and thereby indirectly acquire Beatrice National Bank & Trust Company, Beatrice, Nebraska, and Wymore State Bank, Wymore, Nebraska.

Board of Governors of the Federal Reserve System, October 5, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–25275 Filed 10–12–94; 8:45 am]

BILLING CODE 6210–01–F

Fleet Financial Group, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Fleet Financial Group, Inc., Providence, Rhode Island; to engage *de novo* through its subsidiary Fleet Community Development Corporation, Providence, Rhode Island, in making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First State Bancorporation, Inc., Taos, New Mexico; to engage *de novo* through its subsidiary Credit Card Services, Ltd., Las Vegas, Nevada, in providing credit card processing and related services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 5, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–25276 Filed 10–12–94; 8:45 am]

BILLING CODE 6210–01–F

NationsBank Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any

questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 24, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to acquire 100 percent of the voting shares of Consolidated Bank, National Association, Hialeah, Florida.

Board of Governors of the Federal Reserve System, October 7, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–25300 Filed 10–12–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 932–3368]

The American Tobacco Company; 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 Stamford, Connecticut based company from disseminating ads for Carlton or any other cigarettes that represent that consumers will get less tar or nicotine by smoking any number of cigarettes of any of its brands than by smoking one or more cigarettes of any other brand, unless such representations are both true and substantiated by competent and reliable scientific evidence.

DATES: Comments must be received on or before December 12, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler or Shira D. Modell, FTC/601 Bldg.—Rm. 4002, Washington, D.C. 20580. (202) 326–3090 or (202) 326–3116.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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 § 4.9(b)(6)(ii) of 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: The American Tobacco Company, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of The American Tobacco Company, a corporation, and it now appearing that The American Tobacco Company, a corporation (hereinafter sometimes referred to as "proposed respondent"), is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between The American Tobacco Company, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent The American Tobacco Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 281 Tresser Boulevard, in the City of Stamford, State of Connecticut.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. 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 draft of complaint contemplated thereby, 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 respondent, 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.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. 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 respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached 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 proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may 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 the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent, The American Tobacco Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of any cigarette in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, through the presentation of the tar ratings of any of respondent's brands of cigarettes as a numerical multiple, fraction or ratio of the tar of any other brand of cigarettes, and/or the visual depiction of ten packs or a carton of any of respondent's brands versus one pack of any other brand, directly or by implication, that consumers will get less tar by smoking ten packs of any cigarette rated as having 1 mg. of tar than by smoking a single pack of any other brand of cigarettes that is rated as having more than 10 mg. of tar. For purposes of this Order, the term "cigarette' shall be as defined in Section 1332 (1) of Title 15 of the United States Code.

II

It is further ordered that respondent, The American Tobacco Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of any cigarette in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, through the presentation of the tar or nicotine ratings of any of respondent's brands of cigarettes as a numerical multiple, fraction or ratio of the tar or nicotine ratings of any other brand of cigarettes, and/or the visual depiction of more than one pack of any of respondent's brands versus one pack of any other brand, directly or by implication, that consumers will get less tar or nicotine by smoking any number of cigarettes (or packs or cartons of cigarettes) of any of respondent's brands than by smoking one or more cigarettes (or packs or cartons of cigarettes) of any other brand, unless such representation is true and, at the time of making such representation, respondent possesses and relies upon component and reliable scientific evidence that substantiates the representation. For purposes of this Order, "component 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 any objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered that presentation of the tar and/or nicotine ratings of any of respondent's brands of cigarettes and the tar and/or nicotine ratings of any other brand (with or without an express or implied representation that respondent's brand is "low," "lower," or "lowest" in tar and/or nicotine) shall not be deemed to constitute a numerical multiple, fraction or ratio and shall not, in and of itself, be deemed to violate Paragraph I or II of this Order where no more than a single cigarette or pack of respondent's brand is visually depicted versus a single cigarette or pack of any other brand.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent or its 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 its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

VI

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VII

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The American Tobacco Company ("American Tobacco").

The proposed consent order has been placed on the public record for sixty (60) days for reception 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 claims made by American Tobacco in its advertising for cigarettes.

The Commission's complaint in this matter charges American Tobacco with engaging in unfair or deceptive practices in connection with the advertising of its Carlton brand cigarettes. According to the complaint, American Tobacco falsely represented, through the presentation of the tar of its Carlton product as a numerical multiple, fraction or ratio of the tar of other brands of cigarettes, and/or the visual depiction of ten packs or a carton of Carlton cigarettes versus one pack of the other brands: (1) That consumers will get less tar by smoking ten packs of Carlton brand cigarettes than by smoking a single pack of the other brands of cigarettes depicted in the ads, which are rated as having more than 10 mg. of tar; and (2) that it had a reasonable basis for claims that consumers will get less tar by smoking ten packs of Carlton brand cigarettes than by smoking a single pack of the other brands of cigarettes depicted in the ads.

The consent order contains provisions designed to remedy the violations charged and to prevent American Tobacco from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits American Tobacco from representing, through certain means specified in the order, that consumers will get less tar by smoking ten packs of any cigarette rated as having 1 mg. of tar than by smoking a single pack of any other brand of cigarettes that is rated as having more than 10 mg. of tar.

Part II of the order prohibits American Tobacco from representing, through those same means, that consumers will get less tar or nicotine by smoking any number of cigarettes (or packs or cartons of cigarettes) of any of respondent's brands than by smoking one or more cigarettes (or packs or cartons of cigarettes) of any other brand, unless, the representation is true and, at the time it makes such claims, American Tobacco has competent and reliable scientific evidence to substantiate the claims.

Part III of the order provides a limited "safe harbor" for advertising that complies with certain specific requirements in its use of official tar and nicotine ratings. Specifically, presentation of the tar and/or nicotine ratings of any of American Tobacco's brands of cigarettes and the tar and/or nicotine ratings of any other brand shall not, in and of itself, be deemed to violate Part I or Part II of the order where no more than a single cigarette or pack or American Tobacco's brand is visually depicted versus a single cigarette or pack of any other brand.

Part IV of the order requires American Tobacco to maintain copies of all materials relied upon in making any representations covered by the order, as well as all materials that contradict or call into question those representations.

Part V of the order requires American Tobacco to distribute copies of the order to each of its operating divisions and to various officers, agents, representatives or employees of American Tobacco.

Part VI of the order requires American Tobacco to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the order requires American Tobacco to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–25333 Filed 10–12–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3527]

Macy's Northeast, Inc., 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 York-based retail department store subsidiaries to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to deliver a copy of the consent order to retail store managers involved in consumer sales, to inform their retail store managers of their compliance responsibilities, and to develop and implement a program for instructing their sales personnel about the availability and location of manufacturers' warranty information.

DATES: Complaint and Order issued September 13, 1994.[1]

FOR FURTHER INFORMATION CONTACT:

Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, July 6, 1994, there was published in the **Federal Register**, 59 FR 34631, a proposed consent agreement with analysis In the Matter of Macy's Northeast, Inc., 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.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310.

Donald S. Clark,

Secretary.

[FR Doc. 94–25334 Filed 10–12–94; 8:45 am]

BILLING CODE 6750–01–M

[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, N.W., Washington, D.C. 20580.

[Dkt. C–3528]

Montgomery Ward & Co., Incorporated; 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 Illinois-based retail department store to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to deliver a copy of the consent order to retail store managers involved in consumer sales, to inform their retail store managers of their compliance responsibilities, and to develop and implement a program for instructing their sales personnel about the availability and location of manufacturers' warranty information.

DATES: Complaint and Order issued September 13, 1994.[1]

FOR FURTHER INFORMATION CONTACT:

Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, July 6, 1994, there was published in the **Federal Register**, 59 FR 34633, a proposed consent agreement with analysis In the Matter of Montgomery Ward & Co., Incorporated, 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.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310).

Donald S. Clark,

Secretary.

[FR Doc. 94–25335 Filed 10–12–94; 8:45 am]

BILLING CODE 6750–01–M

[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, D.C. 20580.

[Dkt. C–3526]

North American Plastics 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 prohibits, among other things, an Illinois corporation and its officer from making unsubstantiated degradability or environmental benefit representations about their plastic bags in the future.

DATES: Complaint and Order issued September 7, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Brinley Williams, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, Suite 520–A, Cleveland, Ohio 44114, (216) 522–4210.

SUPPLEMENTARY INFORMATION: On Wednesday, April 14, 1993 there was published in the **Federal Register**, 58 FR 19451, a proposed consent agreement with analysis In the Matter of North American Plastics 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.

A comment was 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 cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(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. 94–25336 Filed 10–12–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3529]

Sears, Roebuck and Co.; 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 Illinois-based retail department store to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to deliver a copy of the consent order to retail store managers involved in consumer sales, to inform their retail store managers of their compliance responsibilities, and to develop and implement a program for instructing their sales personnel about the availability and location of manufacturers' warranty information.

DATES: Complaint and Order issued September 13, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, July 6, 1994, there was published in the **Federal Register**, 59 FR 34634, a proposed consent agreement with analysis In the Matter of Sears, Roebuck and Co., 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.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310).

Donald S. Clark,

Secretary.

[FR Doc. 94–25337 Filed 10–12–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941–0073]

Sulzer Limited; 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 require, among other things, a Swiss firm to help launch a new manufacturer of aluminum polyester powder, a substance sprayed on jet engine housings to improve the efficiency of the engines. The consent agreement would resolve FTC antitrust allegations that Sulzer Limited's proposed acquisition of the Metco Division of the Perkin-Elmer Corporation—would in the market for the powder—risk higher prices or restricted supplies worldwide.

DATES: Comments must be received on or before December 12, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ann B. Malester, FTC/601 Bldg., room 2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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 the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Sulzer Limited ("Sulzer") of all of the assets of the Metco Division of The Perkin-Elmer Corporation ("Metco"), and it now appearing that Sulzer, hereinafter sometimes referred to as "proposed respondent", is willing to enter into an Agreement Containing Consent Order ("Agreement") to divest certain assets, cease and desist from certain acts, and to provide for certain other relief,

It is hereby agreed by and between Sulzer, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its principal offices located at CH–8401, Winterthur, Switzerland.

[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, D.C. 20580.

[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, D.C. 20580.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, 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 respondent, 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.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. 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 Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order 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 United States Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's U.S. counsel as stated in this agreement shall constitute service. Proposed respondent waives any right it may 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 the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the draft of complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered That, as used in this Order, the following definitions shall apply:

A. "Sulzer" means Sulzer Limited, its directors, officers, employees, agents and representatives, its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

B. "Metco" means the Metco Division of The Perkin-Elmer Corporation.

C. "Commission" means the Federal Trade Commission.

D. "Acquisition" means the acquisition of certain assets of Metco by Sulzer.

E. "Aluminum polyester powder" means a thermal spray material consisting of wholly aromatic polyester and aluminum silicon that is applied via thermal spray equipment to aircraft turbine engines.

F. "Amdry 2010" means Sulzer's aluminum polyester powder marketed in the United States under the name "Amdry 2010."

G. "Sumitomo Polyester" means wholly aromatic polyester (polyoxybenzoyl homopolymer) that Sumitomo Chemical Company Limited produces for Sulzer according to Sulzer's specifications for use as an input in Amdry 2010.

H. "Sulzer aluminum silicon" means the particular grade specification, and type of aluminum silicon used in Amdry 2010.

I. "Amdry 2010 Ingredients" means Sumitomo Polyester and Sulzer aluminum silicon.

J. "Amdry 2010 Information" means a copy of all information necessary to purchase Amdry 2010 Ingredients and all information necessary for the manufacture and sale of Amdry 2010, including but not limited to:

1. All product information related to Sumitomo Polyester and related know-how, including (without limitation) its morphology, the name(s) of the supplier(s) of Sumitomo Polyester, all particle specifications, formulas, processes, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to acquire commercially acceptable Sumitomo Polyester for use in Amdry 2010;

2. All product information related to Sulzer aluminum silicon, including (without limitation) its morphology, the name(s) of the supplier(s) of Sulzer aluminum silicon, all product specifications, formulas, processes, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to acquire commercially acceptable Sulzer aluminum silicon for use in Amdry 2010;

3. All information related to the manufacture of Amdry 2010, including (without limitation) all production manuals, training materials, lists of equipment used in the manufacturing process, formulas, process, all manufacturing standards and procedures, quality control specifications, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to manufacture commercially acceptable Amdry 2010; and

4. All information related to the sale of Amdry 2010, including (without limitation) product brochures, customer lists, training materials, and other tangible embodiments of know-how used in the sale of Amdry 2010.

K. "Amdry 2010 Equivalent" means an aluminum polyester powder that is chemically equivalent to Amdry 2010 and that is not produced by Sulzer or Metco.

L. "Original equipment manufacturers" means General Electric Aircraft Engines Division, Textron Lycoming, and the Garrett Division of Allied Signal, and their successors and assigns.

M. "Metco 601" means Metco's aluminum polyester powder marketed

in the United States under the name "Metco 601."

N. "Carborundum Ekonol Polyester" means wholly aromatic polyester that The Carborundum Company produces for Metco according to Metco's specifications for use as an input in Metco 601.

O. "Metco aluminum silicon" means the particular grade, specification, and type of aluminum silicon used in Metco 601.

P. "Metco 601 Ingredients" means Carborundum Ekonol Polyester and Metco aluminum silicon.

Q. "Metco 601 Information" means a copy of all information necessary to purchase Metco 601 Ingredients and all information necessary for the manufacture and sale of Metco 601, including but not limited to:

1. All product information related to Carborundum Ekonol Polyester and related know-how, including (without limitation) its morphology, the name(s) of the supplier(s) of Carborundum Ekonol Polyester, all particle specifications, formulas, processes, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to acquire commercially acceptable Carborundum Ekonol Polyester for use in Metco 601;

2. All product information related to Metco aluminum silicon, including (without limitation) its morphology, the name(s) of the supplier(s) of Metco aluminum silicon, all product specifications, formulas, processes, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to acquire commercially acceptable Metco aluminum silicon for use in Metco 601;

3. All information related to the manufacture of Metco 601, including (without limitation) production manuals, training materials, lists of equipment used in the manufacturing process, formulas, process, all manufacturing standards and procedures, quality control specifications, technology, trade secrets, manufacturing information, plans, drawings and data and other tangible embodiments of know-how used to manufacture commercially acceptable Metco 601; and

4. All information related to the sale of Metco 601, including (without limitation) product brochures, customer lists, training materials, and other tangible embodiments of know-how used in the sale of Metco 601.

R. "Metco 601 Equivalent" means an aluminum polyester powder that is chemically equivalent to Metco 601 and that is not produced by Metco or Sulzer.

It is ordered That:

A. Sulzer shall, absolutely and in good faith, divest the Amdry 2010 Information within six (6) months of the date this Order becomes final to an acquirer that will develop, manufacture, sell, and seek original equipment manufacturers' approvals for an Amdry 2010 Equivalent. Sulzer shall divest only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

B. Sulzer shall provide all additional assistance, information and know-how reasonably necessary to the acquirer of the Amdry 2010 Information to help such acquirer receive all product approvals from the original equipment manufacturers necessary for the purchase of an Amdry 2010 Equivalent by such original equipment manufacturers or by any other person pursuant to standards and qualifications established by such manufacturer. Such assistance shall include but not be limited to the following:

1. Paying all costs of testing by or for the original equipment manufacturers for product approvals of an Amdry 2010 Equivalent;

2. Providing any training relevant to the production of an Amdry 2010 Equivalent to the acquirer;

3. Offering any technical assistance necessary to assist the acquirer in its development of an Amdry 2010 Equivalent; and

4. Any additional information or know-how reasonably necessary to the acquirer.

C. Sulzer shall submit to the Commission, within nine (9) months of the date the Commission approves the divestiture of the Amdry 2010 Information, an affidavit from each of the original equipment manufacturers certifying that each such manufacturer has either (1) individually approved an Amdry 2010 Equivalent manufactured by the Commission-approved acquirier of the Amdry 2010 Information for all uses for which Amdry 2010 is approved by such original equipment manufacturer, or (2) individually approved any other person's aluminum polyester powder for all uses for which Amdry 2010 is approved by such original equipment manufacturer and that such manufacturer is not interested in approving an Amdry 2010 Equivalent manufactured by the Commission-approved acquirer of the Amdry 2010 Information for all uses for which Amdry 2010 is approved by such original equipment manufacturer.

D. The purpose of the divestiture of the Amdry 2010 Information is to enable the acquirer to become a viable competitor in the aluminum polyester powder market and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

III

It is further ordered That:

A. If Sulzer has (1) not divested the Amdry 2010 Information within six (6) months of the date this Order becomes final, or (2) not submitted affidavits as required by Paragraph II.C. of this Order, within nine (9) months of the date the Commission approves the divestiture of the Amdry 2010 Information, then the Commission may appoint a trustee to divest both the Amdry 2010 Information and the Metco 601 Information only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Amdry 2010 Information and the Metco 601 Information is to enable the acquirer to become a viable competitor in the aluminum polyester powder market, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. In the event the Commission or the Attorney General brings an action pursuant to Section 5 (*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Sulzer shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5 (*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Sulzer, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in the marketing or manufacturing of chemicals. If respondent has not opposed, in writing,

including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest both the Amdry 2010 Information and the Metco 601 Information and to take all such steps as may be feasible and necessary to assist the acquirer of the Amdry 2010 Information and the Metco 601 Information to receive all product approvals from the original equipment manufacturers necessary for the purchase of an Amdry 2010 Equivalent or a Metco 601 Equivalent by such manufacturer or by any other person pursuant to standards and qualifications established by such manufacturer. Such assistance shall include but not be limited to the following:

a. Requiring respondent to pay all costs of testing by or for the original equipment manufacturers for product approvals of an Amdry 2010 Equivalent or a Metco 601 Equivalent;

b. Requiring respondent to provide any training relevant to the production of an Amdry 2010 Equivalent or a Metco 601 Equivalent to the acquirer;

c. Requiring respondent to offer any technical assistance necessary to assist the acquirer in its development of an Amdry 2010 Equivalent or a Metco 601 Equivalent; and

d. Requiring respondent to provide any additional information or know-how reasonably necessary to the acquirer.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of both the Amdry 2010 Information and the Metco 601 Information and to provide the additional assistance as required by Paragraph III.B.2. of this Order.

4. From the date of appointment, the trustee shall have twelve (12) months to divest both the Amdry 2010 Information and the Metco 601 Information, to provide all additional assistance reasonably necessary to the acquirer, and to submit affidavits to the Commission from each of the original equipment manufacturers certifying that each has individually approved the Amdry 2010 Equivalent or the Metco 601 Equivalent manufactured by the Commisssion-approved acquirer of the Amdry 2010 Information and the Metco 601 Information for all uses for which Amdry 2010 or Metco 601 is approved by such original equipment manufacturer, and if such affidavits are not submitted, the trustee shall have an additional six (6) months thereafter to accomplish the divestiture of both the Amdry 2010 Information and the Metco 601 Information, to provide the additional assistance, and to submit the affidavits. If, however, at the end of the additional six (6) month period, the trustee believes that the original equipment manufacturers will approve the Amdry 2010 Equivalent or the Metco 601 Equivalent manufactured by the Commission-approved acquirer of the Amdry 2010 Information and the Metco 601 Information for all uses for which Amdry 2010 or Metco 601 is approved by such original equipment manufacturer, and will submit said affidavits to the Commission within a reasonable time, the time period for approvals and submission of affidavits may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Amdry 2010 Information and the Metco 601 Information, or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Amdry 2010 Information and the Metco 601 Information, the provision of additional assistance to the acquirer, and the approval of the Amdry 2010 Equivalent or the Metco 601 Equivalent by the original equipment manufacturers. Any delays caused by the respondent shall extend the time for the divestiture of the Amdry 2010 Information and the Metco 601 Information, the additional assistance to the acquirer, and the approvals by the original equipment manufacturers, under this Paragraph in an amount equal to the delay, as determined by the Commission, or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. If the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or such entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Sulzer and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divestiture of the Amdry 2010 Information and the Metco 601 Information and submission of the required affidavits from the original equipment manufacturers.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Paragraph of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture of the Amdry 2010 Information and the Metco 601 Information, the provision of all additional assistance reasonably necessary to the acquirer, and the

submission of affidavits by each of the original equipment manufacturers as required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Amdry 2010 Information and the Metco 601 Information.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV

It is further ordered That:

A. For a ten (10) year period commencing on the date this Order becomes final, Sulzer shall not enter into, obtain, make, carry out or enforce any exclusive agreements with Sumitomo Chemical Company Limited or otherwise take any action whatsoever, directly or indirectly, that would prevent Sumitomo Chemical Company Limited from selling Sumitomo Polyester to any Commission-approved acquirer of the Amdry 2010 Information. Within thirty (30) days after the order becomes final, respondent shall provide a copy of the order to each person at Sumitomo Chemical Company Limited with whom respondent has contact in connection with the purchase of Sumitomo Polyester.

B. If a trustee is appointed and the Metco 601 Information is divested pursuant to Paragraph III.A. of this Order, then for a ten (10) year period commencing on the date the Metco 601 Information is divested, Sulzer shall not enter into, obtain, make, carry out or enforce any exclusive agreements with The Carborundum Company or otherwise take any action whatsoever, directly or indirectly, that would prevent The Carborundum Company from selling Carborundum Ekonol Polyester to any other persons. Within thirty (30) days after the trustee is appointed, respondent shall provide a copy of this Order to each person at The Carborundum Company with whom respondent or Metco has contact in connection with the purchase of Carborundum Ekonol Polyester.

V

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, at the time of such acquisition engaged in, or within the six months preceding such acquisition engaged in, the manufacture, sale, or distribution of aluminum polyester powder in the United States; or

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, sale, or distribution of aluminum polyester powder in the United States.

VI

It is further ordered That:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II. and III. of this Order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with Paragraphs II. and III of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the order, including a description of all substantive contracts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

B. One (1) year from the date this Order becomes final, and annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs IV. and V. of this Order.

VII

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondent that may affect compliance obligations arising out of the Order.

VIII

It is further ordered That, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to Sulzer made to its General Counsel, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order; and

B. Upon five (5) days notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

Anaysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has provisionally accepted an agreement containing a proposed Consent Order from Sulzer Limited ("Sulzer"), which requires Sulzer to divest a copy of all product information regarding Amdry 2010, an aluminum polyester powder, to a Commission-approved acquirer and to assist such acquirer in its efforts to produce and sell an Amdry 2010 equivalent powder ("Amdry 2010 Equivalent").

The proposed Consent Order has been placed on the public record for sixty (60) days for reception 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.

On April 18, 1994, Sulzer and The Perkin-Elmer Corporation ("Perkin-Elmer") entered into an agreement whereby Sulzer agreed to purchase all of the assets of Perkin-Elmer's Metco Division ("Metco"). The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for the manufacture and sale of aluminum polyester powder in the United States. Sulzer's powder is marketed as Amdry 2010 and Metco's powder is marketed as Metco 601. The proposed Consent Order

would remedy the alleged violation by requiring Sulzer to establish a new competitor in the business of manufacturing and selling aluminum polyester powder and to assist such competitor to receive the necessary product approvals from three original equipment manufacturers ("OEMs"). Thus, Sulzer will be required to replace the competition lost due to its acquisition of Metco.

The proposed Consent Order provides that within six (6) months of the Order becoming final, Sulzer shall divest to a Commission-approved acquirer a copy of all information necessary to purchase ingredients for, manufacture, and sell aluminum polyester powder (Amdry 2010 Information") and to assist such acquirer in its efforts to manufacture an equivalent aluminum polyester powder. The divestiture of the Amdry 2010 Information shall be made only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. Sulzer shall provide all additional assistance, information, and know-how reasonably necessary to the acquirer to help such acquirer receive all product approvals from three OEMs necessary for the purchase of an Amdry 2010 Equivalent by such OEMs. The three OEMs included in the Order are General Electric Aircraft Engines Division, Textron Lycoming, and the Garrett Division of Allied Signal. Sulzer shall submit an affidavit from each OEM to the Commission, certifying that each OEM has either approved the Amdry 2010 Equivalent or approved another person's aluminum polyester powder.

In the event that Sulzer has not divested the Amdry 2010 Information within six (6) months of the date the Order becomes final, or submitted the required affidavits to the Commission within nine (9) months of the date the Commission approves the divestiture, then the proposed Consent Order provides that Sulzer shall consent to the appointment by the Commission of a trustee to divest the Amdry 2010 Information and a copy of all product information relating to Metco 601 ("Metco 601 Information") to a Commission-approved acquirer. The trustee shall also have the authority to take such steps as may be feasible and necessary to assist the acquirer to receive approvals from the three OEMs for an Amdry 2010 or a Metco 601 equivalent powder.

Under the provisions of the Consent Order, Sulzer is also required to provide to the Commission a report of its compliance with the divestiture provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until Sulzer has completely divested the Amdry 2010 Information and submitted the required affidavits to the Commission, or consented to the appointment of a trustee to do the same. The proposed Order will also prohibit Sulzer, for a period of ten (10) years, from acquiring, without Federal Trade Commission approval, any stock in any concern engaged in the manufacture, sale, or distribution of aluminum polyester powder in the United States, or any assets used for the manufacture, sale, or distribution of aluminum polyester powder in the United States.

One year from the date the Order becomes final and annually thereafter for nine (9) years, Sulzer will be required to provide to the Commission a report of its compliance with the Consent Order. The Consent Order also requires Sulzer to notify the Commission at least thirty (30) days prior to any change in the structure of Sulzer resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and 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. 94–25338 Filed 10–12–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Committees; Establishment, Renewal, Termination, etc.: Breast and Cervical Cancer Early Detection and Control Advisory Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), the Centers for Disease Control and Prevention (CDC) announces the establishment by the Director of CDC, on September 12, 1994, of the following Federal advisory committee:

Designation: Breast and Cervical Cancer Early Detection and Control Advisory Committee.

Purpose: The Breast and Cervical Cancer Early Detection and Control Advisory Committee will coordinate the activities of the agencies of the Public Health Service (and other appropriate Federal agencies) that are carried out toward achieving the objectives established by the Secretary of Health and Human Services (HHS) for reductions in the rate of mortality from breast and cervical cancer in the United States by the year 2000.

The Committee will provide advice and guidance to the Secretary of HHS, the Assistant Secretary for Health, and the Director of CDC, regarding the early detection and control of breast and cervical cancer and evaluate HHS' current breast and cervical cancer early detection and control activities. The Committee will make recommendations regarding national program goals and objectives; implementation strategies; program priorities including surveillance; epidemiologic investigations; education and training; information dissemination; professional interactions and collaborations; and policy.

Dated: September 14, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention.

[FR Doc. 94–25290 Filed 10–12–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Conference on FDA-Regulated Products and Pregnant Women; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Women's Health, FDA, in cooperation with the Office on Women's Health, Public Health Service; the National Institute of Child Health and Human Development, and the Office of Research on Women's Health, National Institutes of Health; and the Centers for Disease Control and Prevention, is sponsoring a public meeting to gather consumers and representatives from academia, industry, and government to discuss the scientific, legal, and ethical issues associated with testing FDA-regulated products in pregnant women.

DATES: The public meeting will be held on Monday, November 7 and Tuesday, November 8, 1994, from 8 a.m. to 5:30 p.m. Registration is recommended by October 26, 1994. An opportunity for public comment is planned on November 7, 1994, from 1:30 p.m. to 2:30 p.m. Submit written notices of participation by October 31, 1994.

ADDRESSES: The public meeting will be held at the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Hwy.,

Arlington, VA 22202, 703–418–1234. Those persons interested in attending the conference should return registration forms by mail to Michelle Priester, KRA Corp., 1010 Wayne Ave., suite 850, Silver Spring, MD 20910, 301–495–1591, FAX 301–495–9410. Participants who wish to speak during the public comment session should send name, affiliation, address, and phone number to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross or Elyse I. Summers, Food and Drug Administration, Office of External Affairs (HF–24), 5600 Fishers Lane, Rockville, MD 20857, 301–443–3390.

SUPPLEMENTARY INFORMATION: The meeting will include discussions on: (1) The scope of the use of and the need for medical intervention in pregnancy, (2) the extent to which the physiologic changes of pregnancy alter the metabolism of drugs in pregnant women, (3) the application of scientific, legal, and ethical concepts that apply to clinical trials in pregnant women, and (4) strategies to promote research and collection of information on the use of drugs, biologics, and devices in pregnant women and their effects on the fetus.

Dated: October 6, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–25298 Filed 10–12–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[MB–84–CN]

RIN 0938–AG77

Medicaid Program; Charges for Vaccine Administration Under the Vaccines for Children (VFC) Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of notice with comment period.

SUMMARY: On October 3, 1994, we issued in the **Federal Register** (59 FR 50235) a notice with comment period that listed, by State, the interim regional maximum charges that providers may impose for the administration of pediatric vaccines to Federally vaccine-eligible children under the Pediatric Immunization Distribution Program, more commonly known as the Vaccines for Children (VFC) program. This notice also specified the methodology that HCFA used to establish the maximum administration charges and options that States could use.

In that notice, we inadvertently failed to specify the comment period closing date and the addresses for submittal of public comments. The omitted information follows:

Comment period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 12, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–84–NC, P.O. Box 7518, Baltimore, MD 21207–0518.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–84–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 Attn: Laura Oliven, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Marge Sciulli, (410) 966–0691.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 6, 1994.

Michael W. Carleton,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–25373 Filed 10–12–94; 8:45 am]

BILLING CODE 4120–01–P

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 59, No. 60, pp. 14634–14637, dated Tuesday, March 29, 1994) is amended to reflect changes in the structure of the Office of Managed Care (OMC). The OMC-level functional statement has been republished because of a change in administrative codes.

The specific amendments to Part F are as follows:

- Section F.10.A.6. (Organization) is amended to read as follows:

6. Office of Managed Care
   a. Program Support Team
   b. Medicaid Managed Care Team
   c. Data Development and Support Team
   d. Beneficiary Access and Education Team
   e. Program Policy and Improvement Team
   f. Medicare Payment and Audit Team
   g. Operations and Oversight Team
   (1) Operations A Team
   (2) Operations B Team
   (3) Operations C Team

- Section F.20.A.6. (Functions) is amended by deleting the statement and substructure in their entirety and replacing them with the new functional statements. The new functional statements read as follows:

6. Office of Managed Care (FAD)

- Provides national direction and executive leadership for managed health care operations, including Health Maintenance Organizations (HMOs), Prepaid Health Plans (PHPs), Primary Care Case Management programs, Competitive Medical Plans (CMPs), and other Capitated Health organizations.
- Serves as the departmental focal point in the areas of managed health care plan qualification, including quality assurance, ongoing regulation, State and employer compliance efforts, Medicare and Medicaid HMO, Medicare CMP contracting and Medicaid freedom of choice waivers.
- Develops national managed care policies and objectives for the development, qualification, and ongoing compliance of HMOs and CMPs.
- Plans, coordinates, and directs the development and preparation of related legislative proposals, regulatory proposals, and policy documents.
- Formulates, evaluates, and prepares policies, specifications for regulations, instructions, preprints, and procedures related to managed health care.
- Makes recommendations for legislative changes to improve managed health care program policy.

a. Program Support Team (FAD–1)

• Develops, coordinates, and implements the Office of Managed Care (OMC) staff utilization programs including: employee development and training, employee performance, personnel administration, recruitment, selection, placement, and position control.

• Develops, coordinates, and implements OMC's internal financial management program, including formulation, justification, and execution of the OMC budget and coordination of OMC contracts and cooperative agreement expenditures.

• Processes and implements all OMC program and administrative delegations of authority and serves as the focal point for all delegations of authority issues concerning OMC.

• Coordinates OMC involvement in outside audit activity (e.g. Office of Inspector General, the General Accounting Office).

• Coordinates and tracks the Freedom of Information Act requests for OMC.

• Coordinates the controlled correspondence, assignments, congressional, and public inquires related to OMC; coordinates preparation of replies for the signature of the Secretary of the Department of Health and Human Services, the Health Care Administration (HCFA) Administrator, OMC Director, and other senior officials.

• Serves as liaison or provides OMC with support services such as supply; property management; work space; equipment utilization; purchase of computers, hardware, software, and supplies; and printing. Orders manual issuances, forms and records.

• Directs, coordinates and tracks strategic and work planning efforts for OMC.

• Serves as Project Officer for subject related contracts (e.g. consultant, training, evaluation, and program monitoring).

• Develops, modifies, and implements procedures for the ongoing maintenance of official files for OMC including: serving as the control point for the receipt and initial processing of HMOs applications and financial, enforcement, and related documents for appropriate dissemination. Maintains the OMC library which serves as the primary focal point for distribution of information for the industry, the public and OMC staff.

• Provides support to OMC's Program Policy and Improvement component (e.g. assistance with regulation and manual clearance).

b. Medicaid Managed Care Team (FAD1)

• Federal focal point for all Medicaid managed care activities including operations, policy, and technical assistance.

• Provides oversight of, and assistance to, State Medicaid agencies on all Medicaid managed care issues, including managed care entity contracting activities. Provides technical assistance to State regulators and enforces Federal requirements.

• Evaluates and makes recommendations on the access, quality, and cost effectiveness information on State freedom of choice waiver requests (including selective provider contracting requests), through review of state submittal, independent assessments, and regional compliance/validation reviews.

• Evaluates and makes recommendations on managed care concerns specified in State health care reform proposals.

• Provides concurrence on managed care issues involving Section 1115 waivers.

• Formulates, evaluates, and prepares: policies, specifications for regulations, manual instructions, State plan preprints, procedures, and legislative proposals related to Medicaid managed care.

• Develops guidelines, policies, and procedures for Regional Offices (ROs) when reviewing and approving State Medicaid agency contracts with managed care entities. Provides training to HCFA ROs for contract and waiver reviews.

• Coordinates and tracks Medicaid Freedom of Choice waivers and state plan amendments.

• Coordinates Medicaid managed care activities with the Medicaid Bureau and other HCFA components.

• Participates in joint projects with other Federal agencies, States, and the managed care industry on program specific managed care initiatives including: areas related to rate setting; marketing; solvency; maternal and child health; Federally Qualified Health Centers; and Early and Periodic Screening, Diagnosis, and Treatment.

• Supports and participates in Medicaid managed care workgroups with state Medicaid agencies, the managed care industry, and ROs.

• Provides support to OMC's Program Policy and Improvement (e.g. external coordination and communications).

c. Data Development and Support Team (FAD2)

• Manages the HCFA national data systems for Medicare beneficiary managed care enrollment and disenrollment. Provides enrollment and disenrollment support to HMO which contract with independent organizations.

• Develops instructions on procedures for obtaining data on Medicare managed care recipient enrollment and disenrollment.

• Develops requirements/specifications for, and works with the Bureau of Data Management and Strategy to then develop and maintain operational information systems to support current programs (inventory collection, analysis, reporting improvements such as: Plan Information Control System (PICS), Beneficiary Information Tracking System (BITS), Automated Plan Payment System (APPS), Medicaid reports, and monthly Data Reporting Requirements (DRR) reports) for the use of HCFA staff. Develops and maintains instructions in manuals on PICS, BITS, APPS, the Reconsideration Tracking System, and the Group Health Plan System. Provides technical assistance to Central Office (CO) and the ROs on these systems.

• Manages the Automated Plan Payment System and the National Data Reporting Requirements System. Collects and disseminates Medicare and Medicaid managed care data to the public (e.g., Medicaid enrollment reports).

• Provides special analyses of beneficiary enrollment and disenrollment data to monitor managed care membership.

• Provides training to plans and ROs on enrollment, disenrollment, and other operational systems processes and requirements.

• Develops and implements a long-term strategy for data systems improvements including: improved enrollment data, quality performance standards tracking, and minimum data sets.

• Develops a policy database information system. Evaluates the effectiveness of existing and new managed care data systems and implements improvements.

• Works with Federal, State, and the managed care industry on formats and methodologies for collecting and reporting encounter data and other accountability measures.

• Serves as the Project Officer for contracts to support OMC's data needs.

• Produces user-friendly reports of managed care statistics and trends.

• Identifies and utilizes software tools for program improvement. Serves as trouble shooter and provides assistance to OMC components on systems matters.

• Conducts continual monitoring and evaluation of the effectiveness of systems security for OMC to assure confidentiality.

• Proposes policy changes in law, regulations, manual instructions, and procedures related to Data Development and Support to OMC's Program Policy and Improvement component.

d. Beneficiary Access and Education Team (FAD3)

• Serves as the beneficiary advocate regarding access and protection in Federal and State contracts with managed care plans and the development of Federal and State policies affecting health plans. Advises on health plan performance standards to assure beneficiary protection.

• Plans, directs, and implements educational efforts to improve beneficiary information on health care plans. Develops consumer information comparison charts and other educational tools to facilitate beneficiary understanding of health care choices.

• Conducts beneficiary focus groups to determine beneficiary understanding of managed health care options including: respective costs, benefits or quality, and improved consumers education.

• Serves as liaison to the Social Security Administration and States to distribute information on managed health plan options to beneficiaries.

• Serves as the Federal focal point for providing information on beneficiary choice, including presentation of managed care options to State Health Insurance Counselling Projects. Develops an annual listing of managed care choices available to Medicare beneficiaries.

• Plans, conducts, and participates in joint educational initiatives on health plan choices with other payers for retirees, including Department of Defense, employers, and employer coalitions.

• Develops and implements a strategy of promoting Medicare and Medicaid managed care programs to the plan and employer industries, in conjunction with the Office of the Associate Administrator for Customer Relations and Communications. Develops Federal initiatives to promote health education and prevention for beneficiaries in health plans.

• Serves as Project Officer for an external contract to conduct reconsideration decisions for health plan appeals from beneficiaries. Serves as the focal point for policy guidance to the contractor. Disseminates data from reconsideration contract to OMC and ROs.

• Uses program data, including data from the reconsideration contract and other sources, to conduct analyses of beneficiary access and utilization of health care services. Identifies problems and recommends solutions as appropriate.

• Develops marketing standards for Medicare contracting plans and reviews contractor strategies.

• Responds to beneficiary concerns, including Congressional and other inquiries. Develops model beneficiary satisfaction surveys that can be used by plans to determine beneficiary satisfaction with health plan services.

• Proposes policy changes in law, regulations, manual instructions, and procedures related to Beneficiary Access and Education to OMC's Program Policy and Improvement component.

e. Program Policy and Improvement Team (FAD4)

• Develops managed care policies reflecting OMC's vision, Department of Health and Human Services and HCFA initiatives, and Congressional mandates. Serves as the focal point for health care reform issues within OMC.

• Coordinates policy development within OMC, assuring input and recommendations of the affected OMC components. Serves as a policy development resource for OMC components. Coordinates policy development between OMC and other HCFA, Office of General Counsel, and other policy components.

• Serves as the focal point for managed care policy. Plans, develops and prepares policy documents including legislative proposals, regulatory specifications, policy analysis, instructions, and procedures. Develops legislative proposals to improve managed care programs. Serves as legislative liaison for OMC components.

• Develops OMC's research and evaluation agenda in consultation with HCFA's Office of Research and Demonstrations (ORD).

• Initiates and conducts managed care program policy analyses and studies to assess program performance and prepares reports.

• Develops program improvement initiatives for OMC (e.g., payment reform, future delivery systems, and rural opportunity initiatives). Develops initiatives to reach special populations, including low income and vulnerable beneficiaries.

• Develops new managed care products (e.g. new contracting methods) and programs.

• Coordinates policy issues with other payers.

• Provide leadership and coordinate Medicare SELECT and dual eligible issues.

• Reviews HCFA policy documents to determine impact on Managed Care components.

f. Medicare Payment and Audit Team (FAD5)

• Establishes and disseminates interim payment rates, retroactively adjusts payments, and performs end-of-year settlements for all cost-based contracting plans. Ensures timeliness and accuracy of all payments to participating plans and develops, reviews, validates, and authorizes these payments.

• Recommends payment to plans, checks payment accuracy, and resolves payment disputes (including litigation support).

• Develops and implements national payment procedures for coordinated health care plans.

• Develops and maintains national instructional manuals on coordinated health care payment for coordinated health care plans. Provides technical assistance to the plans, ROs, and CO relating to the payment process.

• Serves as Project Officer for the outside audit contractor who performs the desk review of the HMO and CMP cost reports.

• Reviews budgets and cost reports, manages the financial audit process and settlement of final cost reports, ensures payment integrity, and authorizes payments to cost-based contractors.

• Determines and approves benefits and premiums on Adjusted Community Rate (ACR) reviews for contract renewals. Trains and guides OMC staff, contractors and plans in ACR reviews.

• Develops procedures to improve or revise the payment methodologies and processes of HMO and CMP Medicare contractors.

• Manages and assures compliance with presumptive cost limits for cost-based contractors.

• Ensures that appropriate payment methodologies are employed for HCFA Demonstration projects.

• Coordinates OMC data input to the Adjusted Average Per Capita Cost process.

• Resolves payment disputes, including litigation support for cost-based contractors.

• Proposes changes in law, regulations, manual instructions, and procedures related to Medicare Payment and Audit activities to OMC's Program Policy and Improvement component.

g. Operations and Oversight Team (FAD6)

• Investigates, evaluates, approves or denies approval of applications for new Medicare contracts, Federal Qualification of HMOs, and service area expansions of contracts and Federal qualification under Section 1301 of the Public Health Service (PHS) Act, Section 1833 and Section 1876 of the Social Security Act, and related regulations. Integrates RO review of elements of applicant operations into approval or denial decision on Medicare contract applications.

• Reviews and assures HMO and CMP fiscal soundness and solvency during the application process. Monitors financial, fiscal solvency provisions, and legal aspects of federally qualified HMO and CMP operations. o Coordinates with and provides technical assistance to the ROs, state regulators, and professional organizations on review of health services delivery, legal, and financial sections of Medicare contract and Title XIII applications, as well as other managed care requirements.

• Provides oversight of RO performance of monitoring and other assigned regional functions. Provides training for RO staff about procedures, program requirements and HMO operational issues.

• In consultation with the ROs, establishes HMO/CMP contractor performance measures and monitoring and evaluation protocols.

• Coordinates with and provides technical assistance to ROs and ORD the monitoring of Medicare contracting HMOs and CMPs including substantive review of demonstration projects.

• Enforces employer compliance with Section 1310 of the PHS Act (the mandatory offering of an HMO alternative to indemnity health insurance plans).

• Participates in Medicare contract post-approval activities and coordinates all contract renewal/non-renewal, and terminations.

• Evaluates RO recommendations regarding compliance or enforcement actions. Implements intermediate sanctions and other enforcement authorities and refers cases of Civil Money Penalties to the Office of the Inspector General.

• Analyzes Medicare contracting HMO/CMP physician incentives and other economic arrangements to enforce appropriate compliance.

• Reviews and approves or denies contracting HMO/CMP requests for flexible benefits.

• Serves as Federally Qualified HMOs' primary contact for information on activities related to compliance.

• Implements new legislation, regulations or policy regarding Medicare contracting with managed care organizations or Federal Qualification. Proposes changes in law, regulations, instructions, and procedures related to Medicare HMO/CMP and Federally Qualified HMO contracts to OMC's Program Policy and Improvement component.

• Reviews and approves HMO/CMP mergers, acquisitions, changes of ownership, and novation agreements.

• Directs Federal Qualification compliance activities inclusive of investigation of complaints, conduct of for cause activities, findings of non-compliance and revocation of Federal Qualification.

• Monitors loans made under the HMO Loan Program (Section 1310 of the PHS Act).

• Reviews and approves initial ACR proposals from HMO/CMPs applying for a Medicare contract.

(1) Operations A Team (FAD61)

• Investigates, evaluates, approves or denies approval of applications for new Medicare contracts, Federal Qualification of HMOs, and service area expansions of contracts and Federal qualification under Section 1301 of the PHS Act, Section 1833 and Section 1876 of the Social Security Act, and related regulations. Integrates RO review of elements of applicant operations into approval or denial decision on Medicare contract applications.

• Reviews and assures HMO and CMP fiscal soundness and solvency during the application process. Monitors financial, fiscal solvency provisions, and legal aspects of federally qualified HMO and CMP operations.

• Coordinates with and provides technical assistance to the ROs, state regulators, and professional organizations on review of health services delivery, legal, and financial sections of Medicare contract and Title XIII applications, as well as other managed care requirements.

• Provides oversight of RO performance of monitoring and other assigned regional functions. Provides training for RO staff about procedures, program requirements and HMO operational issues.

• In consultation with the ROs, establishes HMO/CMP contractor performance measures and monitoring and evaluation protocols.

• Coordinates with and provides technical assistance to ROs and ORD on the monitoring of Medicare contracting HMOs and CMPs including substantive review of demonstration projects.

• Enforces employer compliance with Section 1310 of the PHS Act (the mandatory offering of an HMO alternative to indemnity health insurance plans).

• Participates in Medicare contract post-approval activities and coordinates all contract renewal/non-renewal, and terminations.

• Evaluates RO recommendations regarding compliance or enforcement actions. Implements intermediate sanctions and other enforcement authorities and refers cases of Civil Money Penalties to the Office of the Inspector General.

• Analyzes Medicare contracting HMO/CMP physician incentives and other economic arrangements to enforce appropriate compliance.

• Reviews and approves or denies contracting HMO/CMP requests for flexible benefits.

• Serves as Federally Qualified HOMs' primary contact for information on activities related to compliance.

• Implements new legislation, regulations or policy regarding Medicare contracting with managed care organizations or Federal Qualification. Proposes changes in law, regulations, instructions, and procedures related to Medicare HMO/CMP and Federally Qualified HMO contracts to OMC's Program Policy and Improvement component.

• Reviews and approves HMO/CMP mergers, acquisitions, changes of ownership, and novation agreements.

• Directs Federal Qualification compliance activities inclusive of investigation of complaints, conduct of for cause activities, findings of noncompliance and revocation of Federal Qualification.

• Monitors loans made under the HMO Loan Program (Section 1310 of the PHS Act).

• Reviews and approves initial ACR proposals from HMO/CMPs applying for a Medicare contract.

(2) Operations B Team (FAD62)

• Investigates, evaluates, approves or denies approval of applications for new Medicare contracts, Federal Qualification of HMOs, and service area expansions of contracts and Federal qualification under Section 1301 of the PHS Act, Section 1833 and Section 1876 of the Social Security Act, and related regulations. Integrates RO review of elements of applicant operations into approval or denial decision on Medicare contract applications.

• Reviews and assures HMO and CMP fiscal soundness and solvency during the application process.

Monitors financial, fiscal solvency provisions, and legal aspects of federally qualified HMO and CMP operations.

• Coordinates with and provides technical assistance to the ROs, state regulators, and professional organizations on review of health services delivery, legal, and financial sections of Medicare contract and Title XIII applications, as well as other managed care requirements.

• Provides oversight of RO performance of monitoring and other assigned regional functions. Provides training for RO staff about procedures, program requirements and HMO operational issues.

• In consultation with the ROs, establishes HMO/CMP contractor performance measures and monitoring and evaluation protocols.

• Coordinates with and provides technical assistance to ROs and ORD on the monitoring of Medicare contracting HMOs and CMPs including substantive review of demonstration projects.

• Enforces employer compliance with Section 1310 of the PHS Act (the mandatory offering of an HMO alternative to indemnity health insurance plans).

• Participates in Medicare contract post-approval activities and coordinates all contract renewal/non-renewal, and terminations.

• Evaluates RO recommendations regarding compliance or enforcement actions. Implements intermediate sanctions and other enforcement authorities and refers cases of Civil Money Penalties to the Office of the Inspector General.

• Analyzes Medicare contracting HMO/CMP physician incentives and other economic arrangements to enforce appropriate compliance.

• Reviews and approves or denies contracting HMO/CMP requests for flexible benefits.

• Serves as Federally Qualified HMOs' primary contact for information on activities related to compliance.

• Implements new legislation, regulations or policy regarding Medicare contracting with managed care organizations or Federal Qualification. Proposes changes in law, regulations, instructions, and procedures related to Medicare HMO/CMP and Federally Qualified HMO contracts to OMC's Program Policy and Improvement component.

• Reviews and approves HMO/CMP mergers, acquisitions, changes of ownership, and novation agreements.

• Directs Federal Qualification compliance activities inclusive of investigation of complaints, conduct of for cause activities, findings of non-compliance and revocation of Federal Qualification.

• Monitors loans made under the HMO Loan Program (Section 1310 of the PHS Act).

• Reviews and approves initial ACR proposals from HMO/CMPs applying for a Medicare contract.

(3) Operations C Team (FAD63)

• Investigates, evaluates, approves or denies approval of applications for new Medicare contracts, Federal Qualification of HMOs, and service area expansions of contracts and Federal qualification under Section 1301 of the PHS Act, Section 1833 and Section 1876 of the Social Security Act, and related regulations. Integrates RO review of elements of applicant operations into approval or denial decision on Medicare contract applications.

• Reviews and assures HMO and CMP fiscal soundness and solvency during the application process. Monitors financial, fiscal solvency provisions, and legal aspects of federally qualified HMO and CMP operations.

• Coordinates with and provides technical assistance to the ROs, state regulators, and professional organizations on review of health services delivery, legal, and financial sections of Medicare contract and Title XIII applications, as well as other managed care requirements.

• Provides oversight of RO performance of monitoring and other assigned regional functions. Provides training for RO staff about procedures, program requirements and HMO operational issues.

• In consultation with the ROs, establishes HMO/CMP contractor performance measures and monitoring and evaluation protocols.

• Coordinates with and provides technical assistance to ROs and ORD on the monitoring of Medicare contracting HMOs and CMPs including substantive review of demonstration projects.

• Enforces employer compliance with Section 1310 of the PHS Act (the mandatory offering of an HMO alternative to indemnity health insurance plans).

• Participates in Medicare contract post-approval activities and coordinates all contract renewal/non-renewal, and terminations.

• Evaluates RO recommendations regarding compliance or enforcement actions. Implements intermediate sanctions and other enforcement authorities and refers cases of Civil Money Penalties to the Office of the Inspector General.

• Analyzes Medicare contracting HMO/CMP physician incentives and other economic arrangements to enforce appropriate compliance.

• Reviews and approves or denies contracting HMO/CMP requests for flexible benefits.

• Serves as Federally Qualified HMOs' primary contact for information on activities related to compliance.

• Implements new legislation, regulations or policy regarding Medicare contracting with managed care organizations or Federal Qualification. Proposes changes in law, regulations, instructions, and procedures related to Medicare HMO/CMP and Federally Qualified HMO contracts to OMC's Program Policy and Improvement component.

• Reviews and approves HMO/CMP mergers, acquisitions, changes of ownership, and novation agreements.

• Directs Federal Qualification compliance activities inclusive of investigation of complaints, conduct of for cause activities, findings of non-compliance and revocation of Federal Qualification.

• Monitors loans made under the HMO Loan Program (Section 1310 of the PHS Act).

• Reviews and approves initial ACR proposals from HMO/CMPs applying for a Medicare contract.

Dated: September 30, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–25372 Filed 10–12–94; 8:45 am]

BILLING CODE 4120–01–P

President's Council on Physical Fitness and Sports; Amending the Location of a Meeting

AGENCY: Office of the Assistant Secretary for Health.

SUMMARY: This notice amends the location of a forthcoming meeting of the President's Council on Physical Fitness and Sports. The notice for this meeting was published in the Federal Register / Vol. 59, No. 182 / Wednesday, September 21, 1994.

DATES: October 25, 1994, 9:30 a.m.

ADDRESSES: The Indian Treaty Room, room 474, Old Executive Office Building, Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Sandra Perlmutter, Executive Director, President's Council on Physical Fitness and Sports, 701 Pennsylvania Avenue, NW, suite 250, Washington, DC 20004–2608, 202/272–3421.

Dated: October 6, 1994.

Sandra Perlmutter,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 94–25246 Filed 10–12–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[PRT–795330]

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.*)

Applicant: M. Kathleen Parker dba Tejas Ecological Services, Lufkin, Texas

The applicant requests a permit to include take activities for the Navasolta ladies'-tresses (*Spiranthes parksii*) 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. 94–25291 Filed 10–12–94; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT–793630

Applicant: Peregrine Fund, Inc., Boise, Idaho

The applicant requests a permit to import blood samples taken from 20 wild Northern Aplomado falcons (*Falco femoralis septentrionalis*) in Mexico for the purpose of scientific research to enhance the survival of the species.

PRT–794994

Applicant: Enrique G. Segovia, c/o South Texas Fur Dressers, Victoria, TX

The applicant requests a permit to export his sport-hunted bontebok trophy (*Damaliscus dorcas dorcas*) to his home in Mexico. The bontebok, imported into the U.S. on January 25, 1994, was culled from the captive herd maintained by Mr. V.Z. Lubee, Merino Donkerpoort, Phillippolis, in South Africa. It is now being returned to Mexico after being processed by a taxidermist.

PRT–795076

Applicant: Siegfried & Roy Enterprises, Inc., Las Vegas, NV

The applicant requests a permit for re-export and re-import of two captive-born tigers (*Panthera tigris*) to and from multiple world sites for enhancement of the species through conservation education.

PRT–795000

Applicant: Kevin J. Thommes, North Pole, AK

The applicant requests a permit to import 6 captive-born White-eared pheasants (*Crossoptilon crossoptilon*) and 6 captive-born Himalayan Monal pheasant (*Lophophorus impeyanus*) from Hainsworth International Livestock Limited, Ormskirk, England for the purpose of enhancement of the survival of the species through propagation.

PRT–793320

Applicant: Wildlife Conservation Society, Bronx, NY

The applicant requests a permit to export blood samples from 5 wild caught gorillas (*Gorilla g. gorilla*) and 19 captive born gorillas to the University of Toronto for the purpose of enhancement of the survival of the species through scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 7, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–25379 Filed 10–12–94; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[OR–943–4210–06; GP4–303; ORE–012008]

Proposed Continuation of Withdrawal, Oregon

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a portion of a land withdrawal continue for an additional 20 years and requests that the land involved remain closed to mining.

DATES: Comments should be received by January 11, 1995.

ADDRESSES: Comments should be sent to the BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 2974 be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The land is described as follows:

Willamette Meridian

Malheur National Forest

T. 15 S., R. 35 E.,
Sec. 8, SW¼NW¼SW¼.

The area described contains 10 acres in Grant County.

The purpose of the withdrawal is to protect the Crescent Campground located approximately 15 miles southeast of Prairie City. The withdrawal segregates the land from operation of the mining laws, but not the mineral leasing laws. The Forest Service requests no change in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal

continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: September 21, 1994.

Robert D. DeViney, Jr.,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–25241 Filed 10–12–94; 8:45 am]

BILLING CODE 4310–33–P

National Park Service

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m. on Wednesday, November 9, 1994, in the University Center, University of New Orleans, Lakefront, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Park Update
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130, Telephone 504/589–3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: October 6, 1994.

Philip A. Francis,

Acting Regional Director, Southwest Region.

[FR Doc. 94–25295 Filed 10–12–94; 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Wednesday, October 19, 1994, 1:30 p.m. until 4:30 p.m.

Address: Public Safety Building, 10 E. Church Street, Room P–205, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: September 30, 1994.

David B. Witwer,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 94–25244 Filed 10–12–94; 8:45 am]

BILLING CODE 4310–70–M

Pea Ridge National Military Park Advisory Team; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Pea Ridge National Military Park Advisory Team will be held at 7 p.m., on Thursday, October 20, 1994, in the park visitor center auditorium, 15930 Highway 62, Garfield, Arkansas.

The Pea Ridge National Military Park Advisory Team was established under authority of section 3 of Public Law 91–383 (16 U.S.C. 1a–2(c)) to provide a forum for dialogue between community representatives and the Pea Ridge National Military park on management issues affecting the park and the community.

The members of the Pea Ridge National Military Park Advisory Team are:

Professor Anne Bailey, Fayetteville, Arkansas
J.C. Beaver, Pea Ridge, Arkansas
Frank Butler, Bentonville, Arkansas
Mark Christ, Little Rock, Arkansas
Professor Edward E. Dale, Fayetteville, Arkansas
L.J. Dart, Gateway, Arkansas
Mayor Mary Rogers Durand, Pea Ridge, Arkansas
Ms. Laurel R. Turner, Rogers, Arkansas
Dr. Gary France, Pea Ridge, Arkansas
Mike Freeman, Pea Ridge, Arkansas
Ms. Podi McHardy, Bentonville, Arkansas
Fred McKinney, Pea Ridge, Arkansas
Dave Montgomery, Pea Ridge, Arkansas
Paul Osborne, Garfield, Arkansas
Mrs. Barbara Owen, Pea Ridge, Arkansas
Flip Putthoff, Rogers, Arkansas
Professor Dan Sutherland, Fayetteville, Arkansas
Bill Watkins, Rogers, Arkansas
Mike Yarberry, Pea Ridge, Arkansas

The matters to be discussed at this meeting include:

—Team orientation and orientation to the park
Election of Team officers
—The Park Boundary Study

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Pea Ridge, National Military Park.

Persons wishing further information concerning this meeting, or who wish to

submit written statements may contact Steve Adams, Superintendent, Pea Ridge National Military Park, P.O. Box 700, Pea Ridge, AR 72751–0700, Telephone 501/451–8122.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Pea Ridge National Military Park.

Dated: October 6, 1994.

Philip A. Francis,

Acting Regional Director, Southwest Region.

[FR Doc. 94–25297 Filed 10–12–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 731–TA–722 (Preliminary)]

Honey From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–722 (Preliminary) under section 733(a) of the Tariff Act of 1930 [1] to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of honey,[2] that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 17, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Fred H. Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on October 3, 1994, by counsel on behalf of the American Beekeeping Federation, Inc., and the American Honey Producers Association.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on Monday, October 24, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179) not later than October 21, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 27, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 7, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–25367 Filed 10–7–94; 8:45 am]

BILLING CODE 7020–02–P–M

[Investigation No. 731–TA–720 (Preliminary)]

Wheel Inserts From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigation.

SUMMARY: On October 5, 1994, the U.S. Department of Commerce and the U.S. International Trade Commission received a letter from the petitioner in

[1] 19 U.S.C. § 1673b(a).

[2] The honey products included in this investigation are imports of natural honey, artificial honey mixed with natural honey, and preparations of natural honey, provided for in heading 0409 and subheadings 1702.90 and 2106.90 of the Harmonized Tariff Schedule of the United States (HTS). Included within this class or kind of merchandise is honey in liquid, creamed, comb, cut comb, or chunk form.

the subject investigation (Consolidated International Automotive, Inc., Los Angeles, CA) withdrawing its petition. The U.S. Department of Commerce has not initiated its investigation as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. § 1673a(c)). Accordingly, the U.S. International Trade Commission gives notice that its antidumping investigation concerning wheel inserts from the People's Republic of China (inv. no. 731–TA–720 (Preliminary)) is discontinued.

EFFECTIVE DATE: October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

Issued: October 7, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–25368 Filed 10–12–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6246.

Comments on the following assessment are due 30 days after the date of availability:

AB–420 (SUB–NO. 1X), CHAPARRAL RAILROAD COMPANY, INC.—ABANDONMENT AND DISCONTINUANCE OF TRACKAGE RIGHTS—IN LAMAR, HUNT, DELTA, FANNIN, COLLIN AND DALLAS COUNTIES, TEXAS, EA available 9/23/94.

Comments on the following assessment are due 15 days after the date of availability:

AB–55 (SUB–NO. 495X), CSX TRANSPORTATION, INC.—ABANDONMENT—IN LAWRENCE COUNTY, INDIANA.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–25359 Filed 10–12–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–316 (Sub-No. 1X)]

Angelina & Neches River Railroad Company—Discontinuance of Trackage Rights Exemption—Angelina County, TX

Angelina & Neches River Railroad Company (ANR) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuance of Trackage Rights* to discontinue trackage rights over the 2.79-mile Rockland Branch owned by Southern Pacific Transportation Company (SP) between milepost 129.33, near Buck Creek, and milepost 132.12, near Dunagan, in Angelina County, TX.[1]

ANR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.11 and 1152.50(d)(1) (notice to government agencies) and 49 CFR 1105.12 (newspaper publication) have been met.[2]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective November 12, 1994, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues[3] and statements of intent to file an OFA under 49 CFR 1152.27(c)(2)[4] must be filed by October 24, 1994. Petitions to reopen must be filed by November 2, 1994.[5] An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on Peter A. Greene, Thompson, Hine and Flory, 1920 N Street, N.W., Suite 700, Washington, DC 20036.

SEA will issue an environmental assessment (EA) by October 18, 1994. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 9276248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Decided: October 5, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–25360 Filed 10–12–94; 8:45 am]

BILLING CODE 7035–01–P

[1] SP has filed a petition for exemption to abandon the Rockland Branch in Docket No. AB–12 (Sub-No. 153X).

[2] ANR has not filed environmental or historic reports on the ground that a discontinuance of trackage rights is not subject to environmental and historic reporting requirements, citing 49 CFR 1105.6(c)(6) and .8(a). Instead, it incorporates by reference the environmental report filed by SP in the related abandonment proceeding.

[3] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[5] Alternative post-abandonment public uses for the right-of-way underlying the line are inapplicable where operations are to be discontinued but the line itself is not being abandoned. Here, trail use/rail banking and other public use alternatives to rail freight service may be pursued in the abandonment proceeding referenced in footnote 1.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–3]

The Medicine Shoppe Denial of Application

On September 16, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to The Medicine Shoppe (Respondent), of Newnan, Georgia, proposing to deny its application for a DEA Certificate of Registration as a retail pharmacy. The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that: Vincent Ehule (Mr. Ehule) was the majority stockholder and president of Respondent's predecessor pharmacy, Real Vitality, Inc., d/b/a All In One Stop Pharmacy (All In One Stop Pharmacy); Yvonne Ehule, Mr. Ehule's wife was the minority stockholder of All In One Stop Pharmacy; in 1992, DEA commenced an investigation of All In One Stop Pharmacy, including an audit for the period September 1990 to September 1992, which revealed substantial shortages of Schedule III and IV controlled substances; the investigation also revealed that Mr. Ehule had no initial inventory and that he dispensed large quantities of controlled substances pursuant to prescriptions which he knew, or should have known, were fraudulent; by letter dated November 11, 1992, Mr. Ehule notified DEA that All In One Stop Pharmacy changed its location to 97 Temple Avenue, Newnan, Georgia, and was renamed The Medicine Shoppe (Respondent); in this same letter Mr. Ehule requested a transfer of his registration under the same corporate ownership, i.e. Real Vitality, Inc.; in response to this letter, DEA indicated that it would initiate proceedings to deny the modification and revoke All In One Stop Pharmacy's DEA registration; and subsequently DEA received an application for registration from Yvonne Ehule on behalf of Respondent, dated July 30, 1993.

The Order to Show Cause was sent to Respondent by registered mail. Respondent timely requested a hearing. After the Government filed its Prehearing Statement, Respondent waived the hearing but requested that Respondent's statements in its request for a hearing be considered in rendering a final decision regarding its application for a new registration. Based upon 1301.54(c), Respondent is deemed to have waived its opportunity for a hearing. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based upon the investigative file and the material submitted in Respondent's request for hearing. 21 CFR 1301.57.

Respondent's predecessor, Real Vitality, Inc., d/b/a All In One Stop Pharmacy, possessed DEA Certificate of Registration, BR2400339. In May of 1992, an investigation of All In One Stop Pharmacy commenced when DEA investigators obtained information from informants that Mr. Ehule, the majority owner and the head pharmacist of All In One Stop Pharmacy, dispensed controlled substances to customers without a valid prescription and that Mr. Ehule dispensed controlled substances in excess of what was legitimately prescribed. As a result, DEA investigators executed an administrative inspection warrant at All In One Stop Pharmacy on September 18, 1992. The inspection revealed that All In One Stop Pharmacy had no initial or biennial controlled substance inventories.

In addition, a review of the controlled substance prescriptions at All In One Stop Pharmacy revealed that 12 prescriptions were not dated; 11 had no patient address indicated; 15 had no practitioner's signature; 88 failed to record the practitioner's address; 37 did not have DEA registrations numbers; 78 Schedule III and IV controlled substance prescriptions were interspersed among non-controlled prescriptions and were not stamped with letter "C"; 19 original prescriptions did indicate the date of dispensing; 6 refills were also not dated dispensed; 66 prescriptions had no initials of the dispensing pharmacist; 137 refills were not initialed by the dispensing pharmacist; one prescription for a Schedule III controlled substance had an annotation that it had been refilled eleven times and four of those refills were for 100 dosage units more than authorized by the original prescription; and three other prescriptions were filled more than five times within a six month period.

An accountability audit of All In One Stop Pharmacy's controlled substances for the period of August 27, 1990 through September 18, 1992, was conducted. The audit revealed shortages of controlled substances including approximately: 6,500 dosage units of Schedule II controlled substances; 2,450 dosage units of Schedule IV controlled substances; and 27 ounces of Schedule III liquid form controlled substances.

During the inspection, Mr. Ehule explained to the investigators that controlled substance invoices were interspersed with non-controlled substance purchases and that he did not believe he had all the controlled substance invoices for the last two years. The DEA investigators had to assume a zero beginning inventory because Mr. Ehule did not have a current biennial inventory. In light of the zero beginning inventory and the fact that All In One Stop Pharmacy did not have records of all purchases of controlled substances during the audit period, the shortages, in all likelihood, were understated.

After conducting the audit, DEA investigators interviewed over 30 practitioners whose names appeared on the 172 prescriptions removed from All In One Stop Pharmacy during the administrative inspection. Based upon these interviews, the investigators found that only 55 of these controlled substance prescriptions were authorized. Many prescriptions had been refilled without any authorization and had been refilled in excess of what was authorized. In some cases the prescriptions were filled with a higher strength of the controlled substance than originally prescribed. Other prescriptions were filled with completely different controlled substances than what were authorized on the prescriptions.

Many of the physicians and dentists, who were interviewed, indicated they never saw the patients in question. Many others indicated that they never saw the patient on the day in question and in some cases the practitioner had not seen the patient for over a year. In many instances, the practitioners were able to identify the signatures on the prescriptions as obvious forgeries. A number of the prescriptions indicated DEA registration numbers that were not assigned to the practitioner who ostensibly signed them.

Prior to the audit, a person acting in an undercover capacity presented a controlled substance prescription to Mr. Ehule. This prescription, which was one of the prescriptions recovered during the administrative inspection, was filled by Mr. Ehule, despite the fact that the practitioner's name and DEA number were fictitious.

At the time of the audit, Mr. Ehule indicated to the investigators that he was planning on closing All In One Stop Pharmacy which was incorporated under Real Vitality, Inc. Mr. Ehule owned 60% of Real Vitality, Inc. stock and he operated the pharmacy. Mrs. Ehule owned 40% of the stock and she operated the other part of the store, which consisted of food and other convenience items.

On November 11, 1992, Mr. Ehule wrote DEA requesting that the

Certificate of Registration issued to Real Vitality, Inc., (d/b/a All In One Stop Pharmacy) be transferred to The Medicine Shoppe (Respondent), 97 Temple Avenue, Newnan, Georgia. The corporate owner, Real Vitality, Inc., in which Mr. Ehule was the majority stockholder, remained the same. In response to this request, DEA notified Mr. Ehule that it planned to initiate proceedings to revoke his current DEA number and to deny the request for modification. Since Mr. Ehule discontinued business at his original location, All In One Stop Pharmacy, the DEA registration for that location terminated pursuant to 21 CFR 1301.62.

Shortly thereafter, DEA learned that in April 1993, Real Vitality, Inc. sold Respondent to Mr. Ehule's wife, Yvonne Ehule. DEA then received a new application for registration of Respondent, which was operating as The Medicine Shoppe and owned by Real Vitality, Inc. It was signed by Mrs. Ehule and dated July 30, 1993.

Subsequently, DEA investigators determined that Mr. Ehule continued to work as a pharmacist at Respondent. The Georgia State Board of Pharmacy granted a state controlled substance license to Respondent, based upon the transfer of ownership of Respondent from Mr. Ehule to Mrs. Ehule. On three occasions, between August 1993 and October 1993, Mr. Ehule accepted call-in prescriptions for controlled substances even though Respondent was not authorized by DEA to handle controlled substances. Mr. Ehule then arranged to have another pharmacy fill these prescriptions.

DEA investigators also uncovered various documents relating to Respondent which revealed that Mr. Ehule has a significant interest in Respondent. Respondent is a franchise of the Medicine Shoppe International, Inc. (franchisor). On August 25, 1992, Mr. Ehule, as President of Real Vitality, Inc., signed a franchise contract with the franchisor. Both Mr. and Mrs. Ehule are listed as guarantors of this contract. The credit and security agreement between Real Vitality, Inc. and the franchisor, dated October 5, 1992, designates Mr. Ehule, as well as Mrs. Ehule, as the shareholders of Real Vitality, Inc. and all licensing fees are designated to be drawn from Mr. and Mrs. Ehule's joint checking account. On April 6, 1993, Real Vitality, Inc. assigned its interest in the franchising agreement to Mrs. Ehule. The assignment, however, provides that Mr. Ehule is not released from the terms and conditions of the agreement.

Mr. Ehule is listed as the sole lessee for the property of Respondent. The period of the lease agreement is effective from October 12, 1992 through September 30, 2002. By letter, dated October 26, 1993, the president of the leasing company stated that Mr. Ehule had not notified the company of any change of ownership of Respondent. Additionally, any change by way of sublease would not release Mr. Ehule from the terms and conditions of the lease.

The franchisor also agreed to a financing loan for Respondent and secured such loan using Mr. and Mrs. Ehule's personal residence as well as the pharmacy, All In One Stop Pharmacy, that Mr. Ehule closed before opening Respondent in Newnan, Georgia. Again, Mr. Ehule, as well as Mrs. Ehule, signed this agreement and the security deed.

In evaluating whether Respondent's registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registration would be inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, he has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. *See David E. Trawick, D.D.S.*, Docket No. 88–69, 53 FR 5326 (1988).

Factor two applies because Mr. Ehule's experience in dispensing controlled substances was dismal. Based upon the practitioner interviews, it was established that there were 117 unauthorized controlled substance prescriptions filled between August 1990 and September 1992. Mr. Ehule's pattern of dispensing without making any bona fide attempts to verify prescriptions was confirmed when an undercover person presented Mr. Ehule with a controlled substance prescription that had entirely fictitious information on it. The unauthorized dispensing was not limited to one specific problem but included diverse violations such as dispensing unauthorized refills, increasing the dosage units authorized, increasing the strength of the controlled substance from what was authorized and even dispensing different types of controlled substances in addition to what was authorized. One prescription for a Schedule III controlled substance had an annotation that it had been refilled eleven times and four of those refills were for 100 dosage units more than authorized by the original prescription.

Factor four is applicable based upon the numerous violations of controlled substance regulations by Mr. Ehule while operating the All In One Stop Pharmacy between August 1990 and September 1992. He filled 163 controlled substance prescriptions which did not include the date, patient information and practitioner information (including prescriptions which did not even have a DEA number on them) in violation of 21 CFR 1306.05(a). Eighty-five initial prescriptions either did not have the initials of the dispensing pharmacist or failed to denote a date when the controlled substances were dispensed in violation of 21 CFR 1304.24(d). Six refill prescriptions did not have the date of refill and 137 refills did not have the initials of the dispensing pharmacist in violation of 21 CFR 1306.22(a). Seventy-eight Schedule III and IV controlled substance prescriptions were interspersed with non-controlled substance prescriptions and did not contain the letter "C" in the right hand corner. Thus these prescriptions were not readily retrievable as required under 21 U.S.C. 827(b) and 21 CFR 1304.04(h)(2). Four controlled substance prescriptions were refilled more than five times within a six month period in violation of 21 CFR 1306.22(a). In one case, the prescription was refilled eleven times. The audit revealed over 7,500 shortages of various Schedule III and IV controlled substances.

Under these circumstances, there is no question that had Mr. Ehule simply applied for a transfer of the DEA Certificate of Registration from All In One Stop Pharmacy to Respondent (The Medicine Shoppe) such transfer would have been denied and All In One Stop Pharmacy's registration revoked. The issue to be addressed, then, is the effect of the transfer of Real Vitality, Inc., d/b/a Respondent to Mrs. Ehule. Given the circumstances of this transfer, the Deputy Administrator concludes that the transfer does not protect the public interest and thus, the application must be denied.

The transfer of Respondent to Mr. Ehule's wife occurred shortly after Mr. Ehule was informed that DEA would oppose the modification and seek revocation of All In One Stop Pharmacy's DEA registration. In addition, Mr. Ehule continued to operate as Respondent's pharmacist. Moreover, on three occasions, Mr. Ehule accepted controlled substance prescriptions on behalf of Respondent although he had no authority to do since Respondent was not authorized to handle controlled substances.

In its request for a hearing, Respondent argues that Mrs. Ehule is the current owner and sole assignee of Respondent and therefore the application should be granted. Yet Mr. Ehule retains a substantial financial interest in Respondent. He is liable as a guarantor under the franchising agreement and lease. Respondent also obtained a loan from the franchisor; the collateral for this loan was the personal residence of Mr. and Mrs. Ehule and the corporation of Respondent, Real Vitality Inc., in which Mr. Ehule was the majority stockholder.

Respondent offers the assurance in its request for a hearing that Mr. Ehule will not be involved in the ownership of Respondent. Given Mr. Ehule's substantial financial stake in Respondent, this assurance cannot be realized.

Respondent also maintains that Mrs. Ehule has not been convicted of any offenses relating to controlled substances and that any errors attributable to Mr. Ehule should not reflect on her fitness to operate the Respondent pharmacy. While Respondent's former assertion may be true, it is not relevant. The relevant issue is whether Mrs. Ehule will operate Respondent independently of Mr. Ehule. In this respect Mrs. Ehule has demonstrated that such a scenario is very unlikely. Under similar circumstances, DEA has denied an application based upon the sale of a retail pharmacy to a spouse. *Cumberland Prescription Center*, Docket No. 86–91, 52 FR 37224 (1987).

Mrs. Ehule owned 40% of All In One Stop Pharmacy and operated the non-pharmacy portion while Mr. Ehule was abusing the pharmacy's controlled substances privileges. Mrs. Ehule exercised no control whatsoever. Mr. Ehule continued to operate as a pharmacist of Respondent (and represented that he had legal authority to accept controlled substance prescriptions when he did not) even after Mrs. Ehule became owner of Respondent. Nothing in the present record gives the Deputy Administrator any confidence that Mrs. Ehule could or would prevent Mr. Ehule from operating the Respondent pharmacy, her belated assertions in the request for a hearing notwithstanding. Mrs. Ehule's promises are even more suspect in the face of the fact that the transfer of ownership to her occurred shortly after Respondent was informed by DEA that modification of his registration would be opposed. Under these circumstances, there is no assurance whatsoever that the public interest would be protected if the present application were granted.

No evidence of explanation or mitigating circumstances has been offered by Respondent except the assertions and objections in its request for a hearing which in no way refute the numerous controlled substance violations that occurred. The public interest cannot be protected by granting Respondent a registration in light of Mr. Ehule's involvement with Respondent. Therefore, the Deputy Administrator concludes that Respondent's application for a DEA Certification Registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that the application executed by The Medicine Shoppe, on July 30, 1993, for a DEA Certificate of Registration as a retail pharmacy, be, and it hereby is, denied. This order is effective October 13, 1994.

Dated: October 5, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–25272 Filed 10–12–94; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: National Archives and Records Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Steven G. Rappold, Human Resources Services Division (ADM.HRS), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001, (301) 713–6760 (voice/TDD).

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommendations regarding the recertification of senior executives, and recommend final action to the appointing authority regarding matters related to senior executive performance.

The Members of the Performance Review Board for the National Archives and Records Administration are: Ralph C. Bledsoe, Assistant Archivist for Policy and Information Resources Management Services; Linda N. Brown, Assistant Archivist for Public Programs; Raymond A. Mosley, Assistant Archivist for Special and Regional Archives; Thomas King, Director of Human Resources Information Management, Department of Health and Human Services; and John Seal, Chief Management Officer, Pension Benefit Guarantee Corporation. These appointments supersede all previous appointments.

Dated: October 4, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–25259 Filed 10–12–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Amended Notice of Meeting; Music Advisory Panel: Chorus Section; Panel Meeting; Correction

October 7, 1994.

ACTION: Notice of correction to FR 94–24899, published on October 7, 1994 on page 51218.

SUMMARY: This notice corrects the scheduling of sessions for the Music Advisory Panel (Chorus Section) previously published in the Federal Register, on October 7, 1994 on page 51218 (FR 94–24899). The meeting was scheduled as follows: from 9:00 a.m. to 5:30 p.m. on October 25–26, 1994 and from 9:00 a.m. to 3:00 p.m. on October 27, 1994. These sessions were to be closed for application review and an open session for a policy discussion and guideline review was scheduled for 3:00 to 5:00 p.m. on October 27, 1994.

Explanation

This panel was split into two sections (Chorus and Services to Choruses) to avoid conflicts of interest. The panels will meet from October 25–27, 1994, The Chorus Section will meet from 9:00

a.m. to 6:00 p.m. on October 25, 1994; from 8:30 a.m. to 6:00 p.m. on October 26, 1994; and from 8:30 a.m. to 4:00 p.m. on October 27, 1994. The Services to Choruses Section will meet from 4:00 p.m. to 5:30 p.m. on October 27, 1994. All sessions will be closed for application review except for an open session to discuss policy and review guidelines from 1:00 p.m. to 4:00 p.m. on October 27, 1994.

Dated: October 7, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–25382 Filed 10–12–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of Submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 71—Packaging and Transportation of Radioactive Material—Rule to Achieve Compatibility with the International Atomic Energy Agency (IAEA).

3. The form number if applicable: Not applicable.

4. How often the collection is required: Serial numbers would be added to packages once. Identification of codes and standards proposed for use in package design would be required once, with the application. Previously submitted material would be consolidated and submitted once, with the application. Written instructions would be provided to a carrier once for each exclusive use shipment.

5. Who will be required or asked to report: All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

6. An estimate of the number of responses annually: 360.

7. An estimate of the total number of hours needed annually to complete the requirement or request: The revision will require 6.97 hours per response, plus 6.50 hours per recordkeeper, for a total increase of 2,585 hours annually.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Applicable.

9. Abstract: The NRC is amending its regulations for the safe transportation of radioactive material to make them compatible with those of the IAEA, and to incorporate new licensing requirements for packages used to transport plutonium by air. The revision to 10 CFR Part 71 would add four additional information collection requirements as follows: serial numbers on Type B packages; consolidation of previously submitted material in renewal applications; written instructions to carriers for exclusive use shipments; and maintenance of records of shipments by serial number of the package.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Officer of Information and Regulatory Affairs (3150–0008), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 415–7232.

Dated at Rockville, Maryland, the 30th day of September 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–25304 Filed 10–12–94; 8:45 am]

BILLING CODE 7590–01–M

1994 All Agreement States Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public meeting with representatives of the 29 Agreement States to discuss technical and program management issue in the regulation of Atomic Energy Act radioactive materials. Panel discussions will be held and individual presentations will be made to clarify and enhance a general understanding of regulatory requirements designed to protect the safety of the public and radiation workers. The progress of ongoing revisions to current NRC regulations, as well as, implementation of new regulatory requirements will be discussed. The status of reporting specific radiological incidents and the exchange of radiological safety information will also be discussed.

DATES: The public meeting will be held on Monday, October 24, 1994 from 8:00 a.m. to 5:00 p.m. and Tuesday, October 25, 1994 from 8:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting is to be held at the Ramada Inn and Conference Center, 1230 Congress Street, Portland, Maine, Telephone (207–774–5611).

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 504–2327, FAX (301) 504–3502 and Internet (LAB@NRC.GOV).

SUPPLEMENTARY INFORMATION: The following topics will be covered at this meeting:

1. Policy Statement on the Agreement State Program—Guidance and Principles of Operations for the Agreement States Program.

2. Update on the development of the Integrated Materials Performance Evaluation Program (IMPEP).

3. Exchange-of-Information Program—The use of computers and telecommunication equipment to share radiological safety and incident information.

4. Medical Issues—NRC's experience in implementing the Medical Quality Management Rule. The proposed revision of 10 CFR Part 35 on the Medical Uses of Byproduct Material. The National Academy of Science Study on the uses of radioactive materials and radiation in medicine.

5. Abandoned Radioactive Material—Report on specific cases. The process for accepting abandoned radioactive material. The role of the Federal Agencies (NRC, DOE, EPA).

6. Operational Events—Abnormal Occurrence Reporting. The National Materials Events Database. The Events Reporting Process.

7. Materials Regulation—10 CFR Part 20 compliance experience. Radiation regulatory jurisdiction and reciprocal recognition of materials licenses. Regulations development—10 CFR Part 34 on Industrial Radiography.

8. NRC Technical Assistance to the Agreement States.

The meeting will be conducted in a manner that will expedite the orderly

conduct of business. A transcript of the meeting will be available for inspection and copying for a fee, at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C. 20555 on or about November 25, 1994.

The following procedures apply to public attendance at the meeting:

1. Questions or statements from attendees other than participants, i.e., participating representatives of each Agreement State and participating NRC staff will be entertained as time permits; and

2. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 6th day of October, 1994.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 94–25305 Filed 10–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

In the Matter of Duke Power Company (McGuire Nuclear Station Units 1 and 2); Exemption

I

The Duke Power Company (the licensee) is the holder of Facility Operating License Nos. NPR–9 and NPF–17, which authorize operation of the McGuire Nuclear Station, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water reactors, McGuire Nuclear Station, Units 1 and 2, at the licensee's site located in Mecklenburg County, North Carolina.

II

Title 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Light-water Nuclear Power Reactors for Normal Operation," states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in appendices G and H to 10 CFR part 50. Apendix G to 10 CFR part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure-relieving devices called Power-Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee LTOP analysis indicates that using the appendix G safety margins to determine the PORV setpoint would result in a pressure setpoint within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation.

The licensee proposed that in determining the design setpoint for LTOP events for McGuire Units 1 and 2, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins currently required by appendix G, 10 CFR part 50. Designated Code Case N–514, the proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee. The content of this code case has been incorporated into appendix G of section XI of the ASME Code and published in the 1993 Addenda to Section XI. The MRC staff is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and appendix G of Section XI into the regulations.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the LTOP setpoint. By application dated June 28, 1994, the licensee requested an exemption from 10 CFR 50.60 for this purpose.

By letter dated August 18, 1994 (and further clarified by letter dated September 7, 1994), the licensee supplied additional information that described the use of a secondary side heat source to permit the heatup of the reactor coolant system, assuming that the exemption was not granted. Since the secondary side heat source could cause primary side transients, the staff considers the use of a secondary side heat source to be an undesirable method of operation.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions, from the requirements of 10 CFR part 50 when (1, the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule* * *".

The underlying purpose of 10 CFR 50.60 Appendix G is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (1/4) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the McGuire reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements.

Using the licensee's proposed safety factors instead of appendix G safety factors to calculate the LTOP setpoint will permit a higher LTOP setpoint than would otherwise be required and will provide added margin to prevent normal operating surges from lifting the PORVs or cavitation of the reactor coolant pumps.

IV

For the foregoing reasons, the NRC staff has concluded that the Licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the Duke Power Company an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact. Publication of the Environmental Assessment and Finding of No Significant Impact in the **Federal Register** was delayed due to circumstances beyond the Commission's control. The Commission has determined that emergency circumstances exist and therefore is issuing this exemption pursuant to 10 CFR 51.13 and 51.35 without prior publication. Publication in the **Federal Register** will occur on October 3, 1994.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–25301 Filed 10–12–94 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Company; 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 Nos. NPF–9 and NPF–17 issued to Duke Power Company (the licensee) for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendment would correct a technical deficiency existing in the Technical Specifications (TS) which has caused difficulty to plant operations when swapping of the NV pumps was needed in Modes 4, 5, and 6. This amendment is requested to permit flexibility in the operation of the NV pumps during unit startup. McGuire Unit 1 is currently in cycle 10 startup process.

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. Basis for Conclusion That the Amendment Would Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated:

No significant increase in probability of an accident previously analyzed will occur. While the probability of the mass addition pressure transient will increase slightly, this increase is judged to be insignificant due to the short time of operation with two NV pumps (≤15 minutes) and the accompanying TS 3.4.9.3 requirement for two operable NC system PORVs.

The consequences of the mass addition pressure transient accident will not increase for the same reasons described above.

2. Basis for Conclusion that the Amendment Would Not Create the Possibility of a New or Different Kind of Accident From Any Previously Analyzed:

The accident related to the operation of an additional NV pump is the mass addition pressure transient accident as previously analyzed and documented in the basis for TS 3.1.2.3, 3.1.2.4, and 3.5.3. No other new accident or different kind of accident will be created by allowing two NV pump operation for 15 minutes via this proposed TS Amendment.

3. Basis for Conclusion That the Amendment Would Not Represent A Significant Reduction in A Margin of Safety:

The margin of safety regarding the mass addition pressure transient will not be appreciably decreased due to the short duration (≤15 minutes) of two NV pump operation combined with the operability of two NC system PORVs required by TS 3.4.9.3 in Mode 4 (≤300°F). Additionally, the margin of safety will be marginally increased as relates to the NC pump seal failure small break LOCA due to the increased assurance of NC pump seal flow during NV train swaps.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 14, 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 Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(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 basis of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue to law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 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 Herbert N. Berkow, petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this section, see the application for amendment dated October 4, 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 Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 6th day of October, 1994.

For the Nuclear Regulatory Commission.

Victor Nerses,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–25303 Filed 10–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Northeast Nuclear Energy Company; 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. DPR–65, issued to Northeast Nuclear Energy Company (NNECO/the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications (TS) by adding a footnote to Surveillance Requirement (SR) 4.6.1.2.d that defers the performance of Type B and C containment leak rate tests to the end of the twelfth refueling outage.

On September 24, 1994, NNECO requested the NRC to exercise its discretion not to enforce compliance with the required actions for Millstone Unit 2 Limiting Conditions for Operations (LCOs) 3.6.1.1 and 3.6.1.2 for the remainder of Cycle 12 operations. The enforcement discretion would permit NNECO to operate Millstone Unit 2 while the proposed amendment is being processed. Millstone Unit 2 was scheduled to begin its refueling outage on October 1, and to enter Mode 5 on October 3, 1994. On September 23, 1994, NNECO discovered that Type B and C containment leak rate tests for certain containment penetrations had not been performed within the 24 months as required by SR 4.6.1.2.d. The specific Action Statement for LCO 3.6.1.2. applies and requires that containment integrity to be restored within 1 hour or place the plant in hot standby within the next 6 hours, and in cold shutdown within the following 30 hours. Since SR 4.6.1.2.d was inadvertently missed, SR 4.0.3 was invoked at approximately 1 p.m. on September 23, 1994. This SR permits the action requirements to be delayed for up to 24 hours to permit the completion of a missed surveillance when the allowable outage time limits of the action requirements are less than 24 hours. Since the Type C test cannot be performed while at power and the Type B tests that have exceeded the 24-month period cannot be completed within the 24-hour window, Millstone Unit 2 would have been forced to shutdown to comply with the requirements of the Millstone Unit 2 TS.

The NRC staff granted orally on September 24, 1994, NNECO's request for enforcement discretion associated with Action Statements of LCOs 3.6.1.1. and 3.6.1.2. to be effective until the proposed amendment would be issued. This enforcement discretion was confirmed by the NRC letter to NNECO dates September 30, 1994.

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.

Pursuant to 10 CFR 50.91(a)(6) for amendment to be granted under exigent circumstances, the NRC staff must determine 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 (SHC) consideration, which is presented below:

The proposed changes do not involve a SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to Surveillance Requirement 4.6.1.2.d of the Millstone Unit No. 2 Technical Specifications will extend the frequency for the Type B and C tests that were due between June 2 and September 1, 1994, to the end of the twelfth refueling outage. This change will allow Millstone Unit No. 2 to continue to operate until the plant conducts an orderly shutdown for the next refueling outage. This proposal does not modify the maximum allowable leakage rate at the calculated peak containment pressure, does not impact the design basis of the containment, and does not change the post-accident containment response.

On February 8, 1988, NNECO conducted the first Type A test for the Millstone Unit No. 2 present 10-year service period. The test passed the "As-Found" and "As-Left" ILRTs. The "As-Found" leakage result was 0.201 weight percent per day and the "As-Left" leakage result was 0.138 weight percent per day. These values represent 53.6% of 36.8% of the Millstone Unit No. 2 Technical Specification Limit of 0.75 L_a (0.375 weight percent per day, based on an L_a equal to 0.5 weight percent per day), respectively. The second Type A test for the present 10-year service period was conducted on December 24, 1992. The "As-Found" and "As-Left" ILRT results were 0.2809 and 0.2577 weight percent per day, respectively. This values represent 74.9% and 68.7% of the Millstone Unit No. 2 Technical Specification limit of 0.75L_a (0.375 weight percent per day, based on an L_a equal to 0.5 weight percent per day). In addition, as of December 1992, the total Type B and C "As-Found" and "As-Left" leakage results were 0.049 and 0.008 weight percent per day, respectively. These values represent 16.3% and 2.7% of the Millstone Unit No. 2 Technical Specification limit of 0.6 L_a (0.3 weight percent per day, based on an L_a equal to 0.5 weight percent per day), respectively. The results of these tests demonstrate that Millstone Unit No. 2 has maintained control of containment integrity by maintaining a conservative margin between the acceptance criterion and the "As-Found" and "As-Left" leakage rates.

During the past two refueling outages, there have been few failures of penetrations/values to pass their LLRTs. During the 1992 and 1990 refueling outages, there were a total of five failures (four in 1992 and one in 1990) of penetrations/valves to pass their LLRTs. Of these failures, only one (penetration 23/72 with valves MS–191B and MS–220B) was a repeat failure. This penetration was tested successfully approximately five months ago.

During Cycle 12, maintenance has been performed on several penetrations/valves. Their operability has been assured by the performance of post-maintenance LLRTs which demonstrated that the leakage from the penetrations/valves were within their acceptance criteria.

Additionally, the 48 Type B penetrations (electrical) and 21 Type C penetrations (valves) that are currently outside of the 24 month interval have each passed their last two "As-Found" tests, as a minimum. These results indicate that the penetration/valves are reliable.

Based on the above, the proposed change to Surveillance Requirement 4.6.1.2.d of the Millstone Unit No. 2 Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to Surveillance Requirement 4.6.2.1.d of the Millstone Unit No. 2 Technical Specifications will extend the frequency for the Type B and C tests that were due between June 2 and September 1, 1994, to the end of the twelfth refueling outage. This change will allow Millstone Unit No. 2 to continue to operate until the plant conducts an orderly shutdown for the next refueling outage. This proposal does not make any physical or operational changes to existing plant structures, systems, or components, does not modify the maximum allowable leakage rate at the calculated peak containment pressure, does not impact the design basis of the containment, and does not change the post-accident containment response.

In addition, the proposed changes do not modify the acceptance criteria for the Type A, B, or C tests. Maintaining the leakage through the containment boundary to the atmosphere within a specific value ensures that the plant complies with the requirements of 10CFR100. The containment boundary serves as an accident mitigator; it is not an accident initiator.

Based on the above, the proposed change to Surveillance Requirement 4.6.1.2.d of the Millstone Unit No. 2 Technical Specifications does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed change to Surveillance Requirement 4.6.1.2.d of the Millstone Unit No. 2 Technical Specifications will extend the frequency for the Type B and C tests that were due between June 2 and September 1, 1994, to the end of the twelfth refueling outage. This change will allow Millstone Unit No. 2 to continue to operate until the plant conducts an orderly shutdown for the twelfth refueling outage. This proposal does not make any physical or operational changes to existing plant structures, systems, or components, does not modify the containment pressure, does not impact the design basis of the containment, and does not change the post-accident containment response.

Additionally, the past Type A, B, and C tests have demonstrated the leak-tightness of the containment and the reliability of the penetrations/valves.

Based on the above, the proposed change to Surveillance Requirement 4.6.1.2.d of the Millstone Unit No. 2 Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 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 15-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 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. 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, 11555 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 14, 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 the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to

rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no signficant 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 Phillip F. McKee, Director, Project Directorate I–4: 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 Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 26, 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 the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 5th day of October 1994.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–25302 Filed 10–12–94; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Power Plan Amendments: Columbia River Basin Fish and Wildlife Program

September 30, 1994.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Proposed amendments to the Columbia River Basin Fish and Wildlife Program (measures for anadromous fish).

SUMMARY: Pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. section 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) is proposing amendments to the anadromous fish provisions of the Columbia River Basin Fish and Wildlife Program (program).

Background

In August, 1994, the Council received recommendations from fish and wildlife agencies, Indian tribes and others, for amendments to the anadromous fish sections of the program. Soon after receiving the recommendations, the Council distributed copies of these recommendations to interested parties. The Council has reviewed the recommendations, and is making its own proposals for program amendments based on the recommendations and on information that has been developed since 1992. The Council will consider the recommendations in light of the standards of the Northwest Power Act, and the September 9, 1994, opinion in *Northwest Resource Information Center* v. *Northwest Power Planning Council*, No. 92–70190, slip opinion (9th Cir. September 9, 1994), which remanded the Strategy for Salmon to the Council to make new findings on recommendations submitted in the Strategy for Salmon process. Simultaneously with the Council's review of the August 1994 recommendations, the Council will reexamine the Strategy for Salmon record and make new findings on recommendations submitted in that process.

Opportunity To Comment

The Council invites comments on the August 1994 recommendations (document 94–42) and the Council's proposed amendments (document 94–48). Commenters also may submit comments on recommendations submitted in the Strategy for Salmon process (document 91–24). Written comments must be submitted by 5 p.m. Pacific time on November 10, 1994, to Steve Crow, Director, Public Affairs Division, Northwest Power Planning Council, 851 S.W. Sixth Avenue, Portland, Oregon 97204–1348. Comments should be labeled "Fish and Wildlife Amendment Comments." Public hearings also will be held in Idaho, Montana, Oregon and Washington on a schedule to be announced in the Council's monthy newsletter, Update. After November 10, the Council may initiate futher consultation or request written information until December 6, 1994. The Council intends to adopt final amendments by mid-December. The Council may adopt or modify in whole

or in part any of the amendment recommendations or proposals.

Commentors who wish to receive copies of the August 1994 recommendations (document 94–42), the Council's proposed amendment (document 94–48), or the Strategy for Salmon recommendations (document 91–24) should call the Portland office, Northwest Power Planning Council, 851 SW., Sixth Ave., Portland, Oregon 97204–1348, toll free 800–222–3355, or 222–5161 in Portland.

FOR FURTHER INFORMATION CONTACT: Contact the Council's Public Affairs Division, 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355.

Edward W. Sheets,

Executive Director.

[FR Doc. 94–25242 Filed 10–12–94; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34791; International Series Release No. 723; File No. SR–Amex–94–18]

Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Israeli Index

October 5, 1994.

On May 31, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options on the Israeli Index ("Israeli Index" or "Index"). On August 2, 1994, the Exchange filed Amendment No. 1 to the proposed rule change, the subject matter of which supersedes the original proposal.[3] On August 8, 1994, the Exchange filed Amendment No. 2 ("Amendment No. 2") to the proposal to clarify how the index will be weighted when the composition of the Index changes from its current number of eleven components.[4] On September 28, 1994, the Exchange filed Amendment No. 3 ("Amendment No. 3") to the proposal to extend the trading hours of the Index options by five minutes, to 4:15 p.m., and to reduce the index value in half by doubling the size of the divisor.[5]

Notice of the proposed rule change was published for comment in Securities Exchange Act Release No. 34554 (Aug. 19, 1994) and appeared in the **Federal Register**, 59 FR 44198 (Aug. 26, 1994). No comments were received on the proposal. This order approves the proposal, as amended.

I. Description of the Proposal

The Amex has developed a new index called The Amex/Oscar Gruss Israel Index, based entirely on shares of widely held Israeli stocks and American Depositary Receipts ("ADRs") traded on the NYSE, Amex, or that are National Market ("NM") securities traded through the National Association of Securities Dealers. Automated Quotation system ("NASDAQ"). The Index contains securities of highly capitalized companies with major business interests in Israel. These include companies which are incorporated in Israel, whose offices are located in Israel, or whose research and development activities are concentrated in Israel.

Index Calculation and Maintenance

The Index is calculated using a "modified" equal dollar weighting methodology. Five of the eleven component securities have been given a higher weighting in the Index in order to more closely approximate the weight the industry represented by that component has in the Israeli stock market. For example, ECI Telecom Ltd. and Teva Pharmaceutical Industries, which are the largest capitalized components in the Index, will have a higher weight in the Index, but not as high as if the Index were capitalization weighted. The Amex believes that this "modified" equal dollar weighting methodology allows the Index to be a more accurate reflection of the Israeli market since it provides a higher weighting for the larger capitalized components, yet does not permit those stocks to dominate the Index.

The following is a description of how the "modified" equal dollar weighting calculation method works. As of the market close on June 17, 1994, a $100,000 portfolio comprised of eleven Israeli component securities was established representing a hypothetical "investment" (rounded to the nearest whole share) of $12,000 in the five largest capitalized Index components and $6,667 in each of the six remaining Index components. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the Index components divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 213.00 at the close of trading on June 17, 1994, however, the Amex has since doubled the Index divisor in order to reduce the Index level.[6] Each quarter thereafter, following the close of trading on the third Friday of March, June, September and December, the Index components will be ranked in descending market capitalization order and the Index portfolio adjusted by changing the number of whole shares of each component stock so that the five largest capitalized stocks in the Index represent 60% of the Index value, and the remaining 40% of the Index value is evenly distributed over the remaining securities. If the number of components in the Index changes from eleven securities, the Amex will continue to weigh the five components with the highest market capitalizations 12%. The remaining components will then be weighted equally.[7] For example, if two new components are added to the Index, the five securities with the highest market capitalizations will be assigned 12% weightings while the remaining eight securities in the Index would be weighted 5%.

The Exchange has chosen to rebalance following the close of trading on the quarterly expiration cycle because it allows an option contract to be held for up to three months without a change in the Index portfolio while at the same time, maintaining the "modified" equal dollar weighting feature of the Index. If necessary, a divisor adjustment is made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

Adjustments to the Index are done on a regular basis and timely, proper and adequate notice is given to investors. An information circular is distributed to all Exchange members notifying them of the quarterly changes. This circular is also sent by facsimile to the Exchange's contacts at the major options firms, mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] In the original proposal, the Amex originally sought approval of a narrow-based, capitalization-weighted index comprised of ten components.

[4] *See* Letter from Nathan Most, Senior Vice President, New Products Development, Amex, to Michael Walinskas, Derivative Products Regulation, SEC, dated August 5, 1994.

[5] *See* Letter from Nathan Most, Senior Vice President, Amex, to Michael Walinskas, Derivative Products Regulation, SEC, dated September 28, 1994.

[6] *See* Amendment No. 3.

[7] *See* Amendment No. 2.

Options News Network. In addition, the Exchange will include in its promotional and marketing materials for the Index a description of the "modified" equal dollar weighting methodology.

As noted above, the number of shares of each component stock in the Index portfolio remains fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock splits, reverse stock splits, a rights offering distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the components's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining portfolio components in the same weighting tier as the stock being replaced will be calculated and that amount "invested" in the stock of the new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

The Amex will calculate and maintain the Index, and pursuant to Exchange Rule 901C(b) may at any time or from time to time substitute stocks, or adjust the number of stocks included in the Index, based on changing conditions in Israel. However, the Exchange will not decrease the number of Index component stocks to less than nine or increase the number of component stocks to greater than fourteen without prior Commission approval.

The value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The Exchange proposes to trade cash-settled, European-style Index options (*i.e.*, exercises are permitted to expiration only). The Exchange also proposes that Israeli Index options will have trading hours from 9:30 a.m. to 4:15 p.m. EST.[8] As with other index options traded on the Amex, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"), The last trading day in an option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Index value for purposes of settling a specific Israeli Index option will be calculated based upon the primary exchange regular way opening sale prices for the component securities.[9] In the case of NM securities, the first reported sale price will be used. As trading begins in each of the Index's component securities, its opening sale price is used in the calculation. Once all of the component stocks have opened, the value of the Index is determined and that value is used as the settlement value of the option. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior day's last sale price is used in the calculation.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer term option series having up to thirty-six months to expiration may be traded. In lieu of such long-term options on a full-value Index level, the Exchange may instead list long-term, reduced-value put and call options based on one-tenth (1/10th) the Index's full-value. In either event, the interval between expiration months for either a full-value or reduced-value long-term option will not be less than six months.

Eligibility Standards for Index Components

The Index's component securities all have major business interests in Israel, and have been selected on the basis of their market capitalization, trading liquidity, and representation of Israeli business industries. The Amex believes the components represent the largest and most liquid of all Israeli securities trading in the U.S., and that the Index tracks closely the performance of larger broad market Israeli indexes, such as the Oscar Gruss Israel Index, which contains all of the more than 50 Israeli securities currently traded in the U.S. this index is carried in the Israeli press as well as by Bloomberg L.P., a major U.S. data vendor.

In choosing among Israeli stocks that meet the minimum criteria set forth in Exchange Rule 901C, the Exchange will select stocks that: (1) Have a minimum market value in U.S. dollars of at least $75 million, except that for each of the lowest weighted component securities in the Index that in the aggregate account for no more than 10% of the weight of the Index, the market value may be at least $50 million; (2) have an average monthly trading volume in the U.S. markets over the previous six month period of not less than 500,000 shares (or ADRs); (3) have at least 85% of the numerical Index value and at least 80% of the total number of component securities meeting the current criteria for standardized option trading set forth in Exchange Rule 915; and (4) are reported securities that trade on either the NYSE, Amex (subject to the limitations of Rule 901C), or are NM securities.

The Amex will ensure that not more than 20% of the weight of the Index is represented by ADRs overlying foreign securities that are not subject to comprehensive surveillance sharing agreements.[10] Currently no Index components have the majority of their trading volume occurring on an exchange with which the Amex does not currently have in place an effective surveillance sharing agreement.

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of regular and long-term contracts based on the Index. These Rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. The Index is deemed to be a Stock Index option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current index value) options series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange proposes to establish, pursuant to Rule 904C(c), a position limit of 7,500 contracts on the same side of the market.

The Exchange seeks to have the ability to utilize its Auto-Ex system for orders in Index options of up to 50 contracts. Auto-Ex is the Exchange's automated execution system which

[8] *See* Amendment No. 3.

[9] In the case of ADRs, the primary exchange refers tot he primary exchange for the ADR and not the underlying security. Telephone conversation between Claire McGrath, Special Counsel, Derivative Securities, Amex, and Stephen Youhn, Derivative Products Regulation, SEC, on Aug. 19, 1994.

[10] *See* Amendment No. 2.

provides for the automatic execution of market and marketable limit orders at the best bid or offer at the time the order is entered. The Amex represents that it has the necessary systems capacity to support new series that would result from the introduction of Israeli Index Options.[11]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[12] Specifically, the Commission finds that the trading of Israeli Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with Israeli securities.[13]

The trading of options on the Israeli Index, including full-value and reduced-value Index LEAPS, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Israeli Index is a narrow-based index. The Israeli Index is composed of only eleven securities, all of which represent Israeli companies.[14] Accordingly, in light of the limited number of components in the Index, the Commission believes it is proper to classify the Israeli Index as narrow-based and apply Amex's rules governing narrow-based index options to trading in the Index options.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component securities significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the components that comprise the Index are actively traded, with an average daily trading volume for the period from January, 1994 through June, 1994, ranging from a high of 453,000 shares per day to a low of 32,000 shares per day. Second, the market capitalizations of the securities in the Index are very large, ranging, during the same period, from a high of $1.46 billion to a low of $80 million, with the mean and median being $487.7 million and $252.95 million, respectively. Third, although the Index is only comprised of eleven component securities, no one particular security or group of securities dominates the Index. Specifically, no one stock or ADR comprises more than 12% of the Index's total value and the percentage weighting of the five largest issues in the Index account for 60% of the Index's value. Fourth, at least 85% of the securities in the Index, by weight, and at least 80% of the number of components of the Index, must be eligible for standardized options trading. This proposed maintenance requirement will ensure that the Index is substantially comprised of options-eligible securities.[15] Fifth, if the Amex increases the number of component securities to more than fourteen or decreases that number to less than nine, the Amex will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of Israeli Index options and Index LEAPS. This will help protect against material changes in the composition and design of the Index that might adversely affect the Amex's obligations to protect investors and to maintain fair and orderly markets in Israeli Index options and Index LEAPS. Sixth, the Amex will be required to ensure that each component of the Index is subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act. This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that, as discussed below, the existing mechanisms to monitor trading activity in the underlying Index components (or options on those securities), will help deter such illegal activity.

The Commission finds that the Exchange's requirements covering minimum capitalization, monthly trading volume, and relative weightings of component stocks are designed to ensure that the trading markets for component stocks are adequately capitalized and sufficiently liquid, and that no one stock or stock group dominates an index. Thus, the Commission believes these standards are reasonably designed to ensure the protection of investors and the public interest and that the satisfaction of these requirements significantly minimizes the potential for manipulation of the Index.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Israeli Index options (including full-value and reduced-value Israeli LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Israeli Index options and full-value and reduced-value Israeli Index LEAPS.

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[11] *See* Letter from Warren I. Kaiser, Senior vice President, Information Technology, Amex, to Michael Welinskas, Derivetive Products Regulation, SEC, deted August 8, 1994. Additionelly, the Options Price reporting Authority ("OPRA") hes stated that it has the necessary systems capecity to support those new series of index options that would result from the introduction of Index options an Index LEAPS. *See* Memorendum from Joe Corrigan, Executive Director, OPRA, to Charles Faurot, Managing Director, Market Data Services, Amex, dated August 8, 1994.

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate epproval of any new option proposal upon e finding that the introduction of such new derivative instrument is in the public interest. Such e finding would be difficult for a derivetive instrument that served no hedging or other economic function, because eny benefits that might be derived by market participants likely would be outweighed by potential for manipulation, diminished public confidence in the integrity of the markets, end other valid regulatory concerns. In this regard, the trading of listed Index options end full-velue Index LEAPS will provide investors with e hedging vehicle that should reflect the overall movement of Isreeli stocks and ADRs in the U.S. securities markets. The Commission also believes that these Index options will provide investors with e means by which to make investment decisions regarding Israeli securities traded in the U.S. securities markets, allowing them to esteblish positions or increase existing positions in such markets in a cost effective manner. Moreover, the Commission believes that the reduced-value Index LEAPS, which will be traded on an index computed et one-tenth the value of the Israeli Index, will serve the needs of reteil investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term markets moves at e reduced cost.

[14] The reduced-value Isreeli Index, which is composed of the same component securities as the Index end calculated by dividing the Index velue by ten, is identical to the Isreeli Index.

[15] Currently, nine of the eleven Index components are options-eligible securities while 89% of the Index, by weight, is comprised of options-eligible securities.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing the list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.[16] In this regard, the Amex, NYSE, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information.[17] Further, as to present and future ADR components of the Index, either the Exchange must have comprehensive surveillance sharing agreements with the primary foreign markets for the securities underlying the ADRs or the U.S. must be the relevant market for surveillance purposes.[18]

D. Market Impact

The Commission believes that the listing and trading of Israeli Index options, including full-value and reduced-value Index LEAPS, on the Amex will not adversely impact the underlying securities markets. First, as described above, for the most part, no one security or group of securities dominates the Index. Second, because at least 85% of the numerical value of the Index and at least 80% of the components of the Index must be accounted for by securities that meet the Exchange's options listing standards, and because each of the component securities must be subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act, the component securities generally will be actively-traded, highly-capitalized securities. Third, the 7,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns.

The Commission believes that settling expiring Israeli Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[19] Lastly, the Commission believes the ability to use Auto-Ex for orders of up to 50 contracts will provide customers with liquid markets and efficient executions.

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 there in the **Federal Register**. The Commission believes that the Amex's doubling of the size of the Index divisor in order to reduce the value of the Index in half is consistent with the purposes of the Act. A lower Index should make the Index options more affordable and available to individual investors, thereby resulting in improved efficiency or liquidity in the execution of these Index options. Furthermore, the Commission believes the Amex's extension of its trading hours in the Index options by five minutes is non-substantive and does not raise any new or unique regulatory issues. Both the Chicago Board Options Exchange, Inc. and Pacific Stock Exchange, Inc. currently trade a form of Index options on an Israeli Index and their trading hours extend until 4:15 p.m. The Amex's change simply brings the three Exchange's into conformity. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–18 and should be submitted by November 3, 1994.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Amex–94–18) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–25277 Filed 10–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34793; File No. SR–Amex–94–31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change American Stock Exchange, Inc. Relating to Market Index Option Escrow Receipts

October 5, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 3, 1994, the Exchange submitted Amendment No. 1 to the proposed rule

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[16] Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[17] If the prices of the ADR components, or the composition of the Index, should change so that greater than 20% of the weight of the Index would be represented by ADRs whose underlying securities were not the subject of a comprehensive surveillance sharing agreement with the Amex, then it would be difficult for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable for the Exchange to continue to trade options on this Index. The Amex should, accordingly, notify the Commission immediately if more than 20% of the numerical value of the Index is represented by ADRs whose underlying securities are not subject to a comprehensive surveillance sharing agreement. Such a change in the current relative weights of the Index or in the composition of the Index will warrant the submission of a rule filing pursuant to Section 19 of the Act. In determining whether a particular ADR is subject to a comprehensive surveillance sharing agreement, *see, e.g.*, Securities Exchange Act Release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[18] *See* Securities Exchange Act Release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[19] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

change to codify certain aspects of the market index option escrow receipt ("MIOER") program in the text of its rules.[3] The Amex has requested accelerated approval of the proposal. 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 Amex proposes to amend Exchange Rule 462 to provide for an index option escrow receipt program. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

In October 1984, the Exchange filed a proposal to amend Rule 462 to provide for the use of cash, cash equivalents, one or more qualified securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options.[4] The proposal was approved as a pilot program at each of the options exchanges and was successfully extended over the years. The Amex now seeks to join the other exchanges and make the pilot program permanent. The Amex also seeks to make conforming changes to Rule 462, so that the rule will correspond to rule language adopted by OCC[5] and the other options exchanges.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 St., NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–31 and should be submitted by November 3, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts, and, in general, protect investors and the public interest.

For various reasons, such as state and federal regulations, many institutions may write call options only on a covered basis in a cash account.[8] Many of these institutions, however, are legally restrained from having deposits of cash or securities at a brokerage firm. Accordingly, in lieu of such a deposit, a bank may issue to the broker an escrow receipt on behalf of their mutual customer, in order to meet the margin requirements for any short options the customer may have written.[9]

Because it is difficult to apply the traditional concept of "cover" to broad-based, cash-settled index options,[10] the Commission approved in 1984 an Amex proposal to allow index options writers

[3] *See* letter from Claire McGrath, Managing Director & Special Counsel, Derivative Securities, Amex, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated October 3, 1994 ("Amendment No. 1"). Specifically, Amendment No. 1 codifies certain provisions regarding (1) Options Clearing Corporation ("OCC") review of the issuing bank or trust company and (2) minimum collateral levels.

[4] *See* Securities Exchange Act Release No. 22323 (August 13, 1985), 50 FR 33439. (August 19, 1985) (File Nos. SR–Amex–84–33; SR–CBOE–84–28, SR–NYSE–84–35; SR–PSE–85–19; SR–Phlx–85–18) ("pilot approval order"). For further discussion of the MIOER pilot program, particularly the acceptable types of collateral, the value thereof and the rights and responsibilities of the customer, the issuing bank or trust company, the broker-dealer and OCC, *see infra*, notes 13–17 and accompanying text.

[5] *See* Securities Exchange Act Release No. 33549 (January 31, 1994), 59 FR 5629 (February 7, 1994) (File No. SR–OCC–89–04) ("OCC approval order").

[6] *See* Securities Exchange Act Release No. 34405 (July 19, 1994), 59 FR 37795 (July 25, 1994) (File Nos. SR–CBOE–87–03, SR–PSE–87–21, SR–Phlx–87–05) ("permanent approval order") (approving proposals by the Chicago Board Options Exchange ("CBOE") the Pacific Stock Exchange ("PSE") and the Philadelphia Stock Exchange ("Phlx") to implement their MIOER programs on a permanent basis and to make certain minor refinements to the type of property acceptable as an escrow deposit). For further discussion of the comparable amendments to Amex Rule 462, *see infra* notes 18–19 and accompanying text.

[7] 15 U.S.C. 78f(b) (1988).

[8] In the context of a short call position, an options writer is covered if he owns the securities underlying the options he has written.

[9] Pursuant to Regulation T of the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), in a cash account, an escrow agreement may be used in lieu of margin for a short call option position if a bank holds the underlying security for the customer writing the option. *See* 12 CFR 220.8(a)(4)(i) (1990).

[10] Existing options on broad-based stock indexes overlie from 20 to over 2,000 securities. As a result, it can be impracticable for an index options writer to be "covered" by having appropriate positions in each component security. In addition, because index options are cash-settled, the securities underlying an index option are never delivered upon assignment.

to enter into escrow agreements without requiring them to collateralize the agreements with all the securities underlying the index.[11] The original MIOER program permitted the use of escrow receipts for short call positions if, among other things, a bank or trust company held for the customer a "basket" of at least ten qualified equity securities. Due to inadequate recordkeeping procedures, settlement delays and financial disincentives, many market participants found this program to be impracticable and uneconomic, particularly in comparison to similar products traded on commodities exchanges.[12]

Accordingly, in 1985, the Commission approved, on a pilot basis, an Amex proposal to change the type of property acceptable as an escrow deposit.[13] This pilot program subsequently has been extended seven times,[14] in order to provide the Amex and OCC with the opportunity to resolve certain matters concerning the format of the receipt and administration of the program.

Currently, a MIOER may be collateralized by cash, cash equivalents, one or more qualified equity securities, or a combination thereof. Pursuant to Regulation T, the term "cash equivalents" is defined to mean the market value of any of the following instruments with one year or less to maturity: (1) Securities issued or guaranteed by the United States or its agencies; (2) negotiable bank certificates of deposit; or (3) bankers acceptances issued by banking institutions in the United States and payable in the United States.[15] An equity security (other than warrants, rights or options) is qualified to be used as collateral for MIOERs issued to cover short call positions if it is traded on a national securities exchange and substantially meets the listing requirements of the New York Stock Exchange ("NYSE") or Amex or if it is enumerated on the current list of over-the-counter margin stocks published by the Federal Reserve Board.

The current escrow receipt program requires that, at the time the option is written, the total value of the collateral underlying the MIOER must be at least equal to the aggregate initial position value (*i.e.*, the index value at trade date times the applicable index multiplier times the number of options contracts covered by the collateral). Although the escrow deposit may include only one or even no securities, the customer must affirm that he is writing index options against a diversified portfolio. In addition, the issuing bank or trust company must be approved by OCC if the receipt is to be forwarded to OCC to meet the clearing member's margin obligations.[16]

Thereafter, the terms of the MIOER[17] specify that, if the value of the collateral falls below 55% of the current position value, the issuing bank or trust company promptly must notify the customer and request that the escrow deposit be supplemented. If the value of the collateral falls below 50% of the current position value, the bank or trust company promptly must notify OCC and the broker who, in turn, will disregard the MIOER and request that margin be deposited for the previously covered short position.

The Amex proposes to convert its MIOER program from pilot to permanent status and to conform Rule 462 with recently approved amendments to the rules of OCC[18] and the other options exchanges.[19] Despite certain refinements, as discussed in more detail below, the current rules will, for the most part, continue to apply.

First, the Amex proposal will limit acceptable "cash equivalents" to securities issued or guaranteed by the United States and having one year or less to maturity ("short-term United States government securities"). As a result, securities issued or guaranteed by agencies of the United States, certificates of deposit and bankers acceptances will no longer be eligible as collateral for MIOERs issued to cover short call positions.

In addition, the definition of "qualified equity securities" will be amended to incorporate all exchange-traded securities, whether or not they meet NSE or Amex listing standards. The proposals also will make certain editorial changes to the Exchange's rules regarding the use of over-the-counter securities to collateralize an escrow receipt, in order to conform that language with the phrasing used in OCC's rules.

After careful review of the operation of the pilot program, the Commission has concluded that the revised MIOER should help provide a safe and efficient mechanism by which index call options can be written in a cash account. As set forth in more detail in its order approving the pilot procedures,[20] the Commission believes that the range of collateral permitted thereunder should provide market participants with greater flexibility, prevent settlement delays and eliminate many of the problems encountered under the original MIOER program. To the extent that the revised escrow receipt is a cost-effective means for institutions restricted to cash account transactions to manage portfolio risk, its implementation on a permanent basis should encourage broader participation in the index options market, thereby adding depth and liquidity to that market.

Based on its experience with the pilot program, however, the Amex, along with OCC, has proposed certain minor refinements to the types of property acceptable as collateral for MIOERs issued to cover short call positions. As the Commission noted in regard to the recently approval proposal by OCC,[21] these new standards will ensure that only liquid assets are eligible to underlie escrow receipts. Specifically, the Commission believes that the proposed rule change is a reasonable response to OCC's finding that certificates of deposit and bankers acceptances present an undue risk to OCC because it has no means of

[11] *See* Securities Exchange Act Release No. 20732 (March 7, 1984), 49 FR 9665 (March 14, 1994) (File No. SR–Amex–84–05). At that time, the staff of the Federal Reserve Board indicated that it believed a MIOER could be used as cover in a cash account. *See* letter from Laura Homer, Securities Credit Officer, Federal Reserve Board, to Richard G. Ketchum, Associate Director, SEC, Division of Market Regulation, dated January 27, 1984.

[12] In addition, OCC, at that time, did not accept escrow receipts for index options margin For further discussion of the original MIOER program and the problems encountered thereunder, *see* pilot approval order, *supra*, note 4.

[13] *See* pilot approval order, *supra* note 4. The Commission simultaneously approved the use by the clearing member of an escrow receipt form, in lieu of margin payments to OCC. *See* Securities Exchange Act Release No. 22324 (August 13, 1985), 50 FR 33443 (August 18, 1985) (File No. SR–OCC–85–07).

[14] *See, e.g.*, Securities Exchange Act Release Nos. 23741 (October 22, 1986), 51 FR 39724 (October 30, 1986) (File No. SR–Amex–86–26); 24121 (February 20, 1987), 52 FR 6258 (March 2, 1987) (File No. SR–Amex–87–09); 24708 (July 15, 1987), 52 FR 27604 (July 22, 1987) (File No. SR–Amex–87–09, Amendment No. 1); 25242 (January 5, 1988), 53 FR 648 (January 11, 1988) (File No. SR–Amex–87–09, Amendment No. 2); 25888 (July 6, 1988), 53 FR 26547 (July 13, 1988) (File No. SR–Amex–87–09, Amendment No. 3); 26274 (November 10, 1988), 53 FR 46522 (November 17, 1988) (File No. SR–Amex–87–09, Amendment No. 4); 27657 (January 30, 1990), 55 FR 4295 (February 7, 1990) (File No. SR–Amex–87–09; Amendment No. 5)

[15] *See* 12 CFR 220.8(a)(3)(ii) (1990).

[16] There are also certain financial, regulatory and depository standards for MIOER issuers. For further discussion of OCC's monitoring obligations, *see* OCC approval order, *supra*, note 5.

[17] Under the Amex rules, escrow receipts must be in a form satisfactory to the Exchange. Because the Commission has only reviewed the escrow receipt submitted by OCC, the Commission previously has indicated and now reiterates that approval of these proposals is limited to the use of escrow receipts containing terms and conditions substantively identical to those in the OCC escrow receipt.

[18] *See* OCC approval order *supra*, note 5.

[19] *See* permenent approval order, *supra*, note 6.

[20] *See* pilot approval order, supra, note 4.

[21] *See* OCC approval order, *supra*, note 5.

ensuring that issuers of such instruments are financially sound.[22] Thus, the Commission agrees that limiting "cash equivalents" to short-term United States government securities will enhance the integrity of escrowed collateral. Moreover, the changes to the definition of "qualified equity security" are consistent with the Federal Reserve Board's definition of "margin security" or existing OCC rules.

Finally, the Commission has determined that the escrow receipt contains safeguards (*e.g.*, minimum collateral levels; the requirement that issuing banks or trust companies notify customers and OCC of reductions in collateral)[23] that should help ensure the adequacy of the collateral posted and diminish the risks associated with MIOERs. To date, the Amex's experience with the pilot program supports the Commission's earlier conclusion that, absent extremely unusual circumstances, the value of the collateral should be greater than the cash difference between the current index value and the exercise price of the option (*i.e*, the amount the must be delivered upon assignment.[24] The Commission therefore believes that implementation on a permanent basis is now appropriate.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This will permit the portfolio management benefits of the proposed rule change to be realized as soon as possible. In addition, the Amex's proposal is identical to proposals by the CBOE, PSE and Phlx that were published in the **Federal Register** for the full comment period and were approved by the Commission.[25]

It is therefore ordered, pursuant to Section 19(b)(2)[26] that the proposed rule change (SR–Amex–94–31) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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[22] In contrast to its monitoring of MIOER issuers, OCC receives no financial information on banks issuing certificates of deposit or bankers' acceptances. Because of the potential exposure if the issuer fails and the instruments become worthless, OCC proposed eliminating them as eligible types of collateral. *See* Securities Exchange Act Release No. 26951 (June 21, 1989), 54 FR 26870 (June 26, 1989) (File No. SR–OCC–89–04). OCC also found that few customers utilize such instruments. *Id.*

[23] For further discussion of value requirements and incentives for the industry to police itself, *see supra*, notes 16–17 and accompanying text.

[24] *See* pilot approval order, *supra*, note 4.

[25] No comments were received in connection with the proposed rule changes by the other options exchanges. *See* permanent approval order, *supra*, note 6.

[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34792; File No. SR–CBOE–94–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Reporting by the Exchange to the Central Registration Depository ("CRD") of Information Concerning Pending Formal Exchange Disciplinary Proceedings

October 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 15, 1994, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to add Rule 17.14 to the CBOE's rules to provide for the reporting by the CBOE to the Central Registration Depository ("CRD"), for disclosure to the public, of information concerning pending formal CBOE disciplinary proceedings. In addition, the CBOE proposes to renumber the provisions which are currently contained in CBOE Rule 17.12 without affecting the substance of these provisions. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 CBOE 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

The purpose of the proposed rule change is to add Rule 17.14 to the exchange's rules to provide for the reporting by the Exchange to the CRD,[3] for disclosure to the public, of information concerning pending formal Exchange disciplinary proceedings.[4] Currently, the Exchange discloses to the CRD information with respect to formal Exchange disciplinary proceedings only upon the conclusion of such proceedings.

Under the proposed rule change, the amount of information concerning formal Exchange disciplinary proceedings[5] reported by the Exchange to the CRD would be expanded to include the issuance of a statement of charges in such proceedings and all significant changes in the status of such proceedings while such proceedings are pending. For the purposes of Rule 17.14,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The CRD is an automated industry database containing employment and disciplinary history of members and associated persons registered with self-regulatory organizations ("SROs") and state securities agencies. The CRD is operated by the National Association of Securities Dealers, Inc. ("NASD") with input on policy and other matters from federal and state agencies and other SROs including the Exchange.

[4] The CBOE represents that information concerning final disciplinary actions taken by the Exchange, the NASD, and other SROs, as well as information concerning certain criminal convictions contained in the CRD, has been disclosed to the public pursuant to the NASD's 800 number service since October 1991. On July 1, 1993, the Commission approved an NASD rule change to make more information available to the public regarding pending disciplinary proceedings or actions taken by federal or state agencies and SROs that relate to securities and commodities transactions, and regarding criminal indictments and information. *See* Securities Exchange Act Release No. 32568 (July 1, 1993), 58 FR 36723 (July 8, 1993). In addition, the Commission recently approved rule changes by both the New York Stock Exchange, Inc. and the Chicago Stock Exchange, Inc. to provide information to the CRD concerning their pending formal disciplinary proceedings. *See* Securities Exchange Act Release Nos. 33844 (March 31, 1994), 59 FR 16669 (April 7, 1994), and 34516 (August 10, 1994), 59 FR 42317 (August 7, 1994), and 34516 (August 10, 1994), 59 FR 42317 (August 17, 1994).

[5] According to the Exchange, for the purposes of Rule 17.14, an Exchange disciplinary proceeding would be considered to be a formal disciplinary proceeding if it is initiated by the Exchange pursuant to Exchange Rule 17.2, *et seq.*

a formal Exchange disciplinary proceeding would be considered to be pending from the time that a statement of charges is issued in the proceeding[6] until the outcome of the proceeding becomes final. In addition, under Rule 17.14, significant changes in the status of a formal Exchange disciplinary proceeding would be deemed to include, but not be limited to, the scheduling of a disciplinary hearing, the issuance of a decision by the BCC, the filing of an appeal to the Exchange's Board of Directors, and the issuance of a decision by the Exchange's Board of Directors.

According to the Exchange, information on pending formal Exchange disciplinary proceedings, among other events, is currently in the CRD, but only to the extent that reports are made by Exchange members, member organizations, and associated persons pursuant to their reporting obligations on the Uniform Application for Securities Industry Registration or Transfer (Form U–4) and Form BD, the uniform application form for broker-dealer registration. The proposed rule change would expand the information available to the public concerning pending formal Exchange disciplinary proceedings by requiring the Exchange to report information concerning such pending proceedings to the CRD.

In addition to the foregoing, the proposed rule change would renumber the provisions which are currently contained in Rule 17.12 (Miscellaneous Provisions) without affecting the substance of these provisions. Specifically, under the proposed rule change, the current provisions of Rule 17.12 would be separated into two rules, Rule 17.12 and Rule 17.13.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it will protect investors and the public interest by enhancing the public's access to information regarding disciplinary proceedings involving Exchange members, member organizations, and associated persons.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 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 Exchange consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE. All submissions should refer to File No. SR–CBOE–94–33 and should be submitted by November 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[FR Doc. 94–25279 Filed 10–12–94; 8:45 am]

BILLING CODE 8010–01–M

[6] The Exchange states that CBOE Rule 17.4(b) provides, in part, that whenever it shall appear to the Exchange's Business Conduct Committee ("BCC") from the report of the staff of the Exchange that there is probeble cause for finding a violation within the disciplinary jurisdiction of the Exchange and that further proceedings are warranted, the BCC shall direct the staff of the Exchange to prepare a statement of charges against the person or organization alleged to have committed a violation (the "Respondent") specifying the acts in which the Respondent is charged to have engaged and setting forth the specific provisions of the Act, as amended, the rules and regulations promulgated thereunder, and the constitutional provisions, by-laws, rules, interpretations, or resolutions of which such acts are in violation. In addition, Rule 17.4(b) further provides that a copy of the charges shall be served upon the Respondent.

[7] 15 U.S.C. § 78f(b)(5) (1988)

[8] 17 CFR 200.30–3(a)(12 (1993)

[Rel. No. IC–20603; 812–9020]

Capital Exchange Fund, Inc., et al.; Notice of Application

October 6, 1994.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Capital Exchange Fund, Inc., Depositors Fund of Boston, Inc., Diversification Fund, Inc., Eaton Vance Equity-Income Trust, Eaton Vance Government Obligations Trust, Eaton Vance Growth Trust, Eaton Vance High Income Trust, Eaton Vance Investment Fund, Inc., Eaton Vance Investment Trust, Eaton Vance Investors Trust, Eaton Vance Municipal Bond Fund L.P., Eaton Vance Municipals Trust, Eaton Vance Municipals Trust II, EV Marathon Gold & Natural Resources Fund, Eaton Vance Special Investment Trust, Eaton Vance Securities Trust, Eaton Vance Total Return Trust, Fiduciary Exchange Fund, Inc., Second Fiduciary Exchange Fund, Inc., The Exchange Fund of Boston, Inc., Vance, Sanders Exchange Fund, Alabama Tax Free Portfolio, Arizona Limited Maturity Tax Free Portfolio, Arizona Tax Free Portfolio, Arkansas Tax Free Portfolio, California Limited Maturity Tax Free Portfolio, California Tax Free Portfolio, Colorado Tax Free Portfolio, Connecticut Limited Maturity Tax Free Portfolio, Connecticut Tax Free Portfolio, Florida Limited Maturity Tax Free Portfolio, Florida Tax Free Portfolio, Georgia Tax Free Portfolio, Government Obligations Portfolio, Growth Portfolio, Hawaii Tax Free Portfolio, High Income Portfolio, Investors Portfolio, Kentucky Tax Free Portfolio, Louisiana Tax Free Portfolio, Maryland Tax Free Portfolio, Massachusetts Limited Maturity Tax Free Portfolio, Massachusetts Tax Free Portfolio, Michigan Limited Maturity Tax Free Portfolio, Michigan Tax Free Portfolio, Minnesota Tax Free Portfolio, Missouri Tax Free Portfolio, Mississippi Tax Free Portfolio, National Limited Maturity Tax Free Portfolio, North Carolina Limited Maturity Tax Free Portfolio, National Municipals Portfolio,

New Jersey Limited Maturity Tax Free Portfolio, New Jersey Tax Free Portfolio, New York Limited Maturity Tax Free Portfolio, New York Tax Free Portfolio, North Carolina Tax Free Portfolio, Ohio Limited Maturity Tax Free Portfolio, Ohio Tax Free Portfolio, Oregon Tax Free Portfolio, Pennsylvania Limited Maturity Tax Free Portfolio, Pennsylvania Tax Free Portfolio, Rhode Island Tax Free Portfolio, Short-Term Income Portfolio, South Carolina Tax Free Portfolio, Special Investment Portfolio, Stock Portfolio, Tennessee Tax Free Portfolio, Texas Tax Free Portfolio, Total Return Portfolio, Virginia Limited Maturity Tax Free Portfolio, Virginia Tax Free Portfolio, and West Virginia Tax Free Portfolio, each an open-end management investment company registered under the Act, and Eaton Vance Prime Rate Reserves, a closed-end management investment company registered under the Act (collectively, the "Funds").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(a), 18(c), 18(f)(1), 22(f), 22(g) and 23(a) of the Act and pursuant to section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Funds to enter into deferred compensation arrangements with their independent trustees.

FILING DATE: The application was filed on May 27, 1994, and amended on August 24, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 31, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 24 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are registered management investment companies. Some of the Funds (the "Portfolios") issue shares to other Funds that invest all or substantially all of their assets in the Portfolios. Eaton Vance Management ("Eaton Vance") currently serves as the administrator or investment adviser for each of the Funds, except the Portfolios. Boston Management and Research, a wholly-owned subsidiary of Eaton Vance, serves as investment adviser to each of the Portfolios. Eaton Vance and Boston Management are each registered under the Investment Advisers Act. Eaton Vance Distributors, Inc., a wholly-owned subsidiary of Eaton Vance, serves as the Funds' principal underwriter. Applicants request that the proposed relief apply to the funds and any requested investment companies that in the future are advised by Eaton Vance or any entity under common control with or controlled by Eaton Vance. The proposed relief would not, however, apply to any investment company that is a money market fund that relies on rule 2a–7 under the Act. Any relief granted from section 13(a)(3) of the Act would extend only to named Funds.

2. A majority of the board of trustees of each Fund currently consists of trustees who are not "interested persons" of that Fund within the meaning of section 2(a)(19) of the Act. The non-interested trustees receive annual fees from the Funds. Applicants propose to offer a deferred fee arrangement to the trustees (the "Eligible Trustees") who receive fees from one or more of (i) the Portfolios and (ii) Funds that do not invest all or substantially all of their assets in a Portfolio (the "Participating Funds"). Under this arrangement, the Eligible Trustees will be entitled to defer to a later date the receipt of all or part of their trustees' fees in order to defer payment of income taxes or for other reasons.

3. The proposed deferred fee arrangements would be implemented by means of a deferred fee agreement (the "Agreement") entered into between an Eligible Trustee and the appropriate Participating Fund. Under each Agreement, the deferred fees will be credited to a book reserve account (the "Deferred Fee Account") established by a Participating Fund with respect to each of its series. The deferred fees will be accrued in an amount equal to that which would have been earned had such fees (and all income earned thereon) been invested and reinvested in shares of any of a selection of the Participating Funds (the "Investment Funds") that may be designated from time to time by the management of the appropriate Participating Fund and the participating Eligible Trustee. Such shares of the Investment Fund that are purchased by a Participating Fund are referred to as the "Underlying Securities." The return on the Deferred Fee Accounts will be based upon the return of the Investment Fund(s) selected by the particular Eligible Trustee or, to the extent one or more of the Investment Funds selected for investment are no longer in existence, upon a recognized measure of prevailing market interest rates (*e.g.*, the Treasury Bill rate).

4. The obligations to make payments from the Deferred Fee Accounts will be general unsecured obligations of each series of a Participating Fund, and payments from the Deferred Fee Accounts will be made from the general assets and property of such Participating Fund. The Agreement will provide that the Participating Fund is under no obligation to purchase, hold or dispose of any investments, but, if the Participating Fund chooses to purchase investments to cover its obligations under such Agreement, then all such investments will continue to be a part of the general assets and property of the Participating Fund.

5. As a matter of prudent risk management, the Participating Funds will purchase and hold shares of the Underlying Securities in amounts equal to the deemed investment of the deferred fee accounts of its Eligible Trustees. Thus, in cases where the Participating Funds purchase shares of the Underlying Securities, liabilities created by the credits to the Deferred Fee Accounts under the Agreement are expected to be matched by an equal amount of assets (*i.e.*, a direct investment in the Underlying Securities). The Agreement will not obligate any Participating Fund to retain the services of any trustee, nor will they obligate any Participating Fund to pay any particular level of compensation to the trustee.

6. Under the Agreement, deferred trustee's fees (including interest accrued thereon) will become payable in cash upon the Eligible Trustee's retirement or

disability. Payments shall be made in a lump sum or in up to ten annual installments. In addition, in the event of the liquidation, dissolution or winding up of the appropriate Participating Fund or the distribution of all or substantially all of the Participating Fund's assets and property to its shareholders, all unpaid amounts in the Deferred Fee Account shall be paid in a lump sum on the effective date thereof. In the event of the Eligible Trustee's death, the deferred compensation will be paid to his or her designated beneficiary. In all other situations, the Eligible Trustee's right to receive payments will be non-transferable.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(c) and 17(b) of the Act to exempt applicants from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(a), 18(c), 18(f)(1), 22(f), 22(g) and 23(a) of the Act to the extent necessary to permit the Funds to offer certain deferred fee arrangements, and section 17(d) of the Act and rule 17d-1 thereunder to permit the Funds to effect certain joint transactions incident to such deferred fee arrangements. The finding required by section 17(b)(2) is predicated on the assumption that relief is granted from section 13(a)(3).

2. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Agreement possesses none of the characteristics of senior securities that led Congress to enact these sections. The Agreement would not: (a) induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; (c) confuse investors or convey a false impression as to the safety of their investments; or (d) be inconsistent with the theory of mutuality of risk. All liabilities created by credits to Deferred Fee Accounts are expected to be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Agreement would set forth all such restrictions, which would be included primarily to benefit the participating trustees and would not adversely affect the interests of such trustees or of any shareholder.

4. Sections 22(g) and 23(a) prohibit registered open-end investment companies and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Agreement would merely provide for deferral of payment of such fees and thus would be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. With limited exceptions, each Fund has adopted an investment policy regarding the purchase of investment company shares, which policy could prohibit or restrict the Fund from purchasing shares of other investment companies. Applicants believe that it is appropriate to exempt applicants as necessary from section 13(a)(3) so as to enable the Participating Funds to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders in the statement of additional information of each Participating Fund of the deferred fee arrangement with the participating trustees. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees. Because investment companies that might exist in the future could establish fundamental policies that would accommodate purchases of shares of investment companies in connection with the deferred fee arrangement, the relief requested from section 13(a)(3) would extend to named applicants only.

6. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company, except in limited circumstances. Funds that are advised by the same entity may be "affiliated persons" under section 2(a)(3)(C) of the Act. Section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants believe that an exemption from this provision would facilitate the matching of each Fund's liability for deferred fees with the Underlying Securities that would determine the amount of such liability.

7. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan "on a basis different from or less advantageous than that of" the affiliated person. Under the Agreement, Eligible Trustees will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholder. Eligible Trustees will receive tax deferral, but the Agreement otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to an Eligible Trustee, the trustee will be no better off (apart from the effect of tax deferral) than if he or she had received trustee fees on a current basis and invested them in Underlying Securities.

Applicants' Condition

Applicants agree that the order granting the requested relief shall be subject to the following condition:

If a Participating Fund purchases Underlying Securities issued by an affiliated Fund, the Participating Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–25280 Filed 10–12–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2747]

California; Declaration of Disaster Loan Area

San Luis Obispo County and the contiguous Counties of Kern, Kings, Monterey, and Santa Barbara in the State of California constitute a disaster area as a result of damages causes a wildfire which occurred on August 14–

18, 1994. Applications for loans for physical damage may be filed until the close of business on December 5, 1994 and for economic injury until the close of business on July 6, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 274705 and for economic injury the number is 836700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 6, 1994.

Richard Hernandez,

Acting Administrator.

[FR Doc. 94–25389 Filed 10–12–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area # 8365]

Massachusetts; Declaration of Disaster Loan Area

Essex County and the contiguous counties of Middlesex and Suffolk in the State of Massachusetts and Hillsborough and Rockingham Counties in the State of New Hampshire constitute an economic injury disaster area as a result of damages caused by a fire which occurred on August 7, 1994. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on July 5, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of New Hampshire is 836600.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 5, 1994.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 94–25390 Filed 10–12–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 03/03–0200]

Anthem Capital, L.P.; Issuance of a Small Business Investment Company License

On August 29, 1994, a notice as published in the **Federal Register** (59 FR 44449) stating that an application had been filed by Anthem Capital, L.P., 29 West Susquehanna Avenue, Baltimore, Maryland 21204, 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 September 13, 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. 03/03–0200 on September 26, 1994, to Anthem Capital. L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 5, 1994.

Thomas C. Bresnan,

Director of Program Support.

[FR Doc. 94–25223 Filed 10–12–94; 8:45 am]

BILLING CODE 8025–01–M

SUSQUEHANNA RIVER BASIN COMMISSION

Comprehensive Plan

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of Public Hearing on Addition to Comprehensive Plan.

The Susquehanna River Basin Commission will hold a public hearing in conjunction with its regular meeting on November 10, 1994 at the Commission's Headquarters Building, 1721 N. Front Street, Harrisburg, Pa. beginning at 8:30 a.m. This hearing will be for the purpose of receiving public comments on the proposed inclusion of the "Chesapeake Bay Policy for the Introduction of Non-Indigenous Aquatic Species" in the Commission's Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin." This policy, which was adopted in November 1993 by five jurisdictions with waters draining to the Chesapeake and the Chesapeake Bay Commission, opposes the first-time introduction of any non-indigenous aquatic species into the unconfined waters of the Chesapeake and its tributaries for any reason unless environmental and economic evaluations are conducted and reviewed in order to ensure that risks associated with the first-time introductions are acceptably low. Written comments will also be accepted and made a part of the hearing record.

Copies of the entire policy statement may be obtained upon request to the Commission at 1721 N. Front Street, Harrisburg, Pa. 17102–2391; 717–238–0423. Written comments may be submitted to and further information obtained from Richard A. Cairo, General Counsel/Secretary at the same address and phone number.

Dated: October 4, 1994.

Paul O. Swartz,

Executive Director.

[FR Doc. 94–25243 Filed 10–12–94; 8:45 am]

BILLING CODE 7040–01–M

DEPARTMENT OF STATE

[Public Notice 2094]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet Thursday, October 27, 1994 in the Department of State, Annex-I, located at Columbia Plaza, 2401 E Street, NW.

The Committee will meet in open session from 9:00 a.m. to 11:00 a.m. on the morning of Thursday, October 27, 1994, in Room 242, State Annex-1. The remainder of the Committee's session until 4:30 p.m. on that day will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b (c)(1), and that the public interest requires that

such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123.

Dated: October 5, 1994.

William Z. Slany,

Executive Secretary.

[FR Doc. 94–25287 Filed 10–12–94; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 94–10–5 and Docket 49814]

Order Tentatively Establishing Exemption Criteria for Regional and Commuter Airlines From Certain Notice Requirements

SUMMARY: We are publishing the order in its entirety as an appendix to this document.

DATES: Issued in Washington, DC, October 6, 1994.

FOR FURTHER INFORMATION CONTACT: Dennis DeVany, Chief, EAS & Domestic Analysis Division, U.S. Department of Transportation, Office of Aviation Analysis, room 6401, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1061.

On August 23, 1994, Congress enacted the Federal Aviation Administration Authorization Act of 1994 (P.L. 103–305), which, among other things, establishes notice requirements on airlines intending to suspend service at certain communities, effective February 1, 1995. Specifically, the law states, "An air carrier may not terminate interstate air transportation from a nonhub airport included on the Secretary's latest published list of such airports, unless such air carrier has given the Secretary at least 45 days' notice before such termination."[1] There are several exemptions to the notice requirement. Carriers are exempt from filing a suspension notice if they are experiencing a sudden or unforeseen financial emergency including natural weather-related emergencies, equipment-related emergencies, or strikes. Other exemptions include seasonal suspensions, cases in which the airline has served the community for 180 days or less, cases in which the airline provides jet service from another airport serving the same community, and cases in which the departing airline arranges with another airline to provide replacement service so that the service continues uninterrupted.[2]

Finally, the law allows for waivers from the notice requirements for regional and commuter airlines. Specifically, the law requires that, "Before January 1, 1995, the Secretary shall establish terms and conditions under which regional/commuter carriers can be excluded from the termination notice requirement."

First, we wish to make clear that nothing in the legislation or in this order has any effect on the notice requirements already in place in connection with the Department's essential air service (EAS) program. All carriers will continue to be subject to all applicable laws and regulations pertaining to the EAS program. In case of conflict, the more stringent and longer notice requirements shall prevail.

By this order we tentatively propose to establish criteria for waivers for regional and commuter airlines. The legislative history of this bill indicates that the primary focus is on jet service, *i.e.*, on ensuring that communities receive at least 45 days' notice before jet service to them is terminated. Consistent with that intent, the legislation requires the Secretary to carve out exemptions for regional and commuter carriers. (The legislation defines a regional/commuter carrier as an airline operating under 14 CFR Part 135, or one operating under 14 CFR Part 121 that operates exclusively with 70-seat or smaller aircraft.) Because the primary focus is on jet service, we propose to exempt regional and commuter carriers from the requirement to file a 45-day notice if jet service would remain at the community. Absent the availability of jet service, the focus of the new law would also appear not to dictate a notice obligation if a community retained two or more non-jet carriers following the suspension of service by another. We would propose, therefore, to grant exemptions from the 45-day filing requirement if two or more regional/commuter carriers would remain at the community, *i.e.*, the third to last commuter/regional carrier would not have to file a notice. We would not exempt the second to last carrier from a notice obligation. Requiring such notice in that situation would obviate the prospect that one of two carriers serving a community could suspend service abruptly even if it was providing the lion's share of the service, as long as the remaining carrier was technically meeting the community's EAS definition.

We will establish a 30-day period from the issue date of this order for interested parties to show cause why we should not adopt our tentative conclusions as final. Any objection should demonstrate how our tentative decision is not consistent with the applicable law and must include the conditions under which regional/commuter airlines should be exempted from the notice requirements. After reviewing all the objections, if any, we will issue an order taking final action on the waivers for commuter and regional carriers.

This order is issued under authority delegated in 49 CFR 1.56(i).

Accordingly,

1. The Department tentatively establishes waivers for regional and commuter airlines from the notice requirements contained in the Federal Aviation Administration Authorization Act of 1994 (P.L. 103–305). The waivers would apply under either of the following two conditions: (1) if the affected community would continue to receive scheduled jet service, or (2) if the affected community would continue to receive scheduled air service from two or more regional/commuter carriers;

2. The Department directs all interested parties to show cause within 30 days of the issue date of this order why we should not finalize the tentative conclusions in paragraph 1 above; and

3. We will publish a copy of this order in the **Federal Register**.

By:

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–25319 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–62–P–M

[1] The final version of the law contains a technical drafting error. The "Definitions" section of the law (section 41715(d)(1)), includes a definition of "nonhub airport" by reference, but the reference is incorrect—i.e., it refers to section 41731(a)(3), which in fact defines a "hub airport", but should have referred to section 41731(a)(4). The Senate version, which was adopted in conference, referred to section 419(k)(4) of the Federal Aviation Act, which correctly defined a "nonhub airport". During the time that the bill was under consideration, the Federal Aviation Act and other related statutes were codified. The incorrect citation above occurred in the translation to the codified statute. We are implementing the provision as intended and will seek corrective legislation.

[2] The Department will issue a Notice of Proposed Rulemaking addressing those issues shortly.

Office of Commercial Space Transportation

[Docket 49815 (Licensing Commercial Space Launch Activities); and Docket No. 43098 (Financial Responsibility Requirements); Notice 94–17]

RIN 2105–AB85; 2105–AA26

Public Meeting; Notice

AGENCY: Office of the Secretary, Office of Commercial Space Transportation, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Department of Transportation's (DOT) Office of Commercial Space Transportation (OCST) is holding a public meeting to obtain industry input to assist it with rulemaking activities currently under consideration. OCST seeks information that will assist it in developing a notice of proposed rulemaking (NPRM) addressing specific requirements for launch and launch site operator license applications submitted to OCST. OCST seeks to standardize its review of license applications while at the same time allowing prospective licensees design and operational flexibility for their proposals. OCST also plans to develop a second NPRM addressing implementation of financial responsibility requirements and allocation of risks associated with the conduct of licensed activities. Accordingly, OCST seeks views concerning the range of activities that may be covered by these requirements and the scope of the U.S. Government's payment of third-party claims that exceed the amount of required liability insurance.

DATES: The meeting is scheduled to take place on October 27 and 28, 1994, from 9:30 a.m. to 5:00 p.m. each day, in Room 2230 of the Department of Transportation's Nassif Building, 400 Seventh Street SW., Washington, DC.

ADDRESSES: Written submissions may be provided to OCST in addition to or in place of oral remarks presented at the public meeting. We would appreciate receiving each submission in triplicate with an indication of the Docket Number (listed above) to which it refers. One submission may be used to address both the licensing and financial responsibility dockets. Submissions should be sent to Docket Clerk, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590. Comments will be available for public inspection at this address from 9:00 a.m. to 5:30 p.m., Monday through Friday. Written submissions should be provided by November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Strine, Deputy Assistant Director for Program Affairs, OCST, (202) 366–2980.

SUPPLEMENTARY INFORMATION

Background

The Commercial Space Launch Act of 1984, 49 U.S.C. 2601–2623, as recodified at 49 U.S.C. Subtitle IX—Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. 70101–70119 (1994) (the Act), authorizes the Secretary of Transportation to oversee and regulate commercial launch activities and the commercial operation of launch sites carried out within the United States or by its citizens. The Act requires that this responsibility be exercised to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States. The Secretary's responsibilities under the Act, including licensing commercial launches and the operation of launch sites, as well as the obligation to encourage, facilitate and promote establishment of a competitive United States commercial space transportation industry, are implemented by OCST.

OCST implements its licensing and regulatory authority through the Commercial Space Transportation Licensing Regulations (Regulations), 14 C.F.R. Ch. III. At the time the Regulations were published in April 1988, no commercial launches had yet taken place. In adopting its approach to licensing commercial launch activities, as reflected in the Regulations, OCST recognized the need to establish a regulatory environment responsive to the needs of an emerging industry while assuring the public that commercial launch activities would be conducted safely and responsibly. At that time, OCST indicated that it would "continue to evaluate and, when necessary, re-shape its program in response to growth, innovation, and diversity in this critically important industry." 53 Fed. Reg. 11006.

Both OCST's experience in administering the Act and launch companies' experience in operating in a commercial environment subject to DOT's regulatory oversight have evolved with time. OCST now seeks to streamline its licensing process while continuing to ensure safety and preserving the flexibility necessary to address myriad launch technologies and associated issues. Accordingly, OCST contemplates issuing rules of general applicability to enhance industry certainty regarding what is required of an applicant in the licensing process and what is required of a licensee after a license has been issued.

Launch and Launch Site Operator Licensing Procedures

Under the Act, a DOT license is required for any person to launch a launch vehicle or operate a launch site within the United States. In addition, a license is also required for a U.S. citizen to launch a launch vehicle or operate a launch site outside the United States. Foreign corporations, partnerships, joint ventures, associations or other entities controlled by U.S. citizens do not need licenses to conduct these activities from foreign territory unless the foreign nation involved has agreed that the United States shall exercise jurisdiction over the activity. In exercising this licensing authority under the Act, the Secretary must protect public health and safety, safety of property, and national security and foreign policy interests of the United States.

The Regulations issued in 1988 reflect OCST's approach to evaluating license applications on a case-by-case basis. To date, OCST has relied on these Regulations, and on guidelines it makes available upon applicant request, to advise prospective applicants of the information OCST requires to perform safety and mission reviews of a launch license application. Having obtained six years of experience in evaluating launch proposals and conducting safety research, OCST is now prepared to streamline the launch licensing process by standardizing requirements wherever possible without impeding innovation. In response to industry requests for greater certainty in the application process, and in order to achieve consistency, OCST proposes to codify certain specific information requirements in regulations. In doing so, the issues to be addressed include: (1) the scope of launch licenses; (2) risk management techniques that enable license applicants to demonstrate acceptable levels of safety; (3) application information requirements; (4) relationship to and consistency with Federal range requirements; and (5) reliance by license applicants on, among other things, industry standards. With respect to launch license application reviews, OCST is interested in obtaining views on at least the following:

- What elements of a launch proposal must OCST evaluate to assure launch safety;
- Which pre-launch or launch processing operations and procedures should OCST assess to assure launch safety;
- What safety methodologies do launch operators currently utilize to

assure safe launch operations, and what approaches are available to evaluate these methodologies;

- How should OCST utilize the analyses of Federal ranges in its licensing review process;
- What information must launch license applicants submit to other federal agencies, including federal ranges, that must also be submitted to OCST as part of the license application review? Can OCST utilize that information to avoid duplicative document preparation and submissions by license applicants; and
- What should OCST require with respect to on orbit safety.

When the Regulations were published in 1988, OCST indicated that it would handle commercial launch site proposals on a case-by-case basis while safety studies and research were ongoing. Since 1988, the vast majority of licensing proposals submitted to OCST have been for commercial launches of launch vehicles from a Federal range. However, in light of the growing and intensified interest in operating commercial launch sites, OCST has determined that establishing certainty in the site operator licensing process through rules of general applicability is necessary to facilitate this burgeoning industry. With respect to OCST's approach to reviewing applications for a license to operate a commercial launch site, OCST seeks views concerning such matters as: (1) the scope of launch site operator licenses; (2) risk management techniques that enable license applicants to demonstrate acceptable levels of safety; (3) application information requirements; (4) reliance by license applicants on industry standards; and (5) reliance by license applicants on other Federal safety standards. With respect to site operator license applications, OCST is interested in obtaining views on at least the following:

- How should OCST assess a proposed launch site with respect to geography, meteorology, proximity to population, risk to downrange population, and other characteristics associated with the physical site;
- What process and standards should OCST utilize, including safety methodologies, to assess the capability of a launch site operator to manage safety;
- What is the relationship between a site operator license and its associated safety reviews, and a launch license authorizing a launch from a commercial launch site and its associated safety reviews;
- For launches conducted from a commercial launch site, how should responsibility for safety be allocated between the launch licensee and the site operator; and
- Given that OCST must evaluate flight safety functions, such as flight termination or tracking, to assure the safety of launch operations, how should those functions be addressed by the licensing process when the launch will be conducted from a commercial launch site.

Scope of Financial Responsibility Requirements

In 1988, Congress amended the Act to require that licensees obtain liability insurance or otherwise demonstrate financial responsibility up to a statutory limit of $500,000,000, in order to protect launch participants from third-party claims resulting from activities carried out under a license in connection with a particular launch. Licensees must also obtain liability insurance or otherwise demonstrate financial responsibility up to $100,000,000, to compensate the U.S. Government for damage or loss to its property resulting from those activities. Reciprocal waivers of claims are also required whereby each party involved in launch services agrees to be responsible for certain losses it may sustain and losses sustained by its own employees resulting from an activity carried out under the license.

The 1988 Amendments further provide that, to the extent provided in advance in an appropriation law or authorized by statute, the Secretary of Transportation shall provide for the payment by the U.S. Government of successful third-party claims against a licensee, contractor, subcontractor, or customer of the licensee, or a contractor or subcontractor of a customer, resulting from an activity carried out under a license, to the extent the total amount of claims arising out of any one launch exceeds the amount of third-party liability insurance required of the licensee, up to a total of $1.5 billion above that amount. The U.S. Government bears the risk of government property losses that exceed the level of insurance coverage required of the licensee. OCST prescribes financial responsibility requirements for licensees on a case-by-case basis after analyzing the maximum probable third-party and government property losses associated with proposed licensed activities. Those requirements are imposed on licensees in license orders. Currently, license orders issued by OCST reflect insurance requirements for both launches and launch site operations associated with the conduct of those launches. Concerns have arisen over the extent to which pre-launch activities are intended to be covered by the financial responsibility requirements of the Act, and the Government payment of excess third-party claims provision. Clarification is needed to provide certainty to the industry so that it may manage risks appropriately.

The Act provides guidance on these issues. To the extent the Act provides for payment by the U.S. Government of successful third-party claims in excess of required insurance, it is only available for claims "*resulting from an activity carried out under the license* issued or transferred under [chapter 701] for death, bodily injury, or property damage or loss *resulting from an activity carried out under the license*." 49 U.S.C. 70113(a)(1)(emphasis added). Moreover, claims may be paid under this provision of the Act only to the extent the total amount of successful claims *related to one launch* exceeds the required amount of third-party liability insurance and does not exceed $1.5 billion above that amount. 49 U.S.C. 70113(a)(1)(emphasis added).

Licenses are available to authorize the conduct of a launch, as defined in the Act, or the operation of a launch site. Because the U.S. Government payment of excess third-party claims provision is only available for claims resulting from an activity carried out under the license for damage or loss resulting from an activity carried out under a license, and because the Act defines launch as "to place or try to place" a launch vehicle and any payload in a suborbital trajectory, in Earth orbit in outer space or otherwise in outer space, 49 U.S.C. 70102(3), one interpretation of this language is that, with respect to launches, it only extends to claims resulting from ignition and flight of a launch vehicle. In other words, it may not be available for claims resulting from preparatory activities conducted at the launch site. Alternatively, some preparatory activities may reasonably be considered integral to the launch itself or part of the launch process. OCST seeks industry views on what those activities are and why they may fall within the statutory definition of a "launch."

OCST plans to adopt specific criteria for determining when an activity would be considered part of a launch for purposes of imposing financial responsibility requirements and to determine when U.S. Government payment of excess third-party claims may be available. OCST also seeks industry views on how the U.S. Government payment of excess third-party claims provision applies to licensed site operators, if at all. Diverse

points of view exist regarding these issues, and OCST seeks information regarding the basis for each point of view as well as recommendations as to which should be adopted.

OCST recognizes that many other issues are associated with implementation of the financial responsibility and allocation of risk requirements of the Act. The issues presented in this Notice are limited in scope because their resolution will necessarily affect OCST's approach to licensing launch activities and site operators. At the meeting, OCST will welcome any other comments on financial responsibility matters, as time allows.

Standards

In accordance with the Presidential Decision Directive, NSTC–4, outlining the National Space Transportation Policy issued August 5, 1994, OCST would like to work with the U.S. commercial space sector to promote the establishment of technical standards for commercial space products and services. OCST solicits industry views on what safety standards should be developed to support this goal, and how they should be implemented.

Meeting Schedule

Because of time constraints and the need to ensure that each subject area is fully aired, OCST intends that one full meeting day be accorded to licensing issues and one-half day to issues concerning the scope of financial responsibility requirements. Licensing issues will be discussed on October 27, 1994. Financial responsibility issues will be addressed in the morning session on October 28, 1994. If licensing issues are exhausted before the time allotted on October 27th, the meeting will move directly to financial responsibility issues.

OCST looks forward to an informative and interactive discussion of the issues among the participants at the meeting, as opposed to a forum for the presentation of prepared statements. However, persons wishing to present prepared remarks at the meeting, whether in a personal or a representative capacity on behalf of an organization, will be given an opportunity to do so during the afternoon session on October 28, 1994, between 1:30 p.m. and 4:00 p.m., and may reserve between five and 15 minutes to do so. In addition, OCST plans to reserve an hour at the end of each day to discuss technical standards and other issues of concern to participants that may not be part of the rulemaking activity. Any time remaining on October 28, 1994, may be used for further discussion of the issues related to rulemaking activities.

Those who are interested in presenting remarks at the meeting should notify OCST no later than October 17, 1994, to reserve up to 15 minutes of time. If possible, OCST will notify interested persons if additional time is available. DOT officials chairing the meeting may take additional time to ask clarifying questions of the speaker. To reserve speaking time, please telephone Ms. Linda Strine (202) 366–2980.

Issued in Washington, DC, October 6, 1994.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 94–25314 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–62–U

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; General Mitchell International Airport, Milwaukee, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Milwaukee County for General Mitchell International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for General Mitchell International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 22, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 23, 1994. The public comment period ends November 22, 1994.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4463. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for General Mitchell International Airport are in compliance with applicable requirements of part 150, effective September 23, 1994. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 22, 1995. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Milwaukee County submitted to the FAA on December 3, 1993, noise exposure maps, descriptions and other documentation which were produced during the FAR part 150 Noise Compatibility Study from September 1989 to December 1993. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Milwaukee County. The specific maps under consideration are the 1992 existing Noise Exposure Map and the 1997 future Noise Exposure Map. The FAA has determined that these maps for General Mitchell International Airport are in compliance with applicable requirements. This determination is effective on September 23, 1994. FAA's determination on an airport operator's

noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determinations does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutory required consultation has been accomplished.

The FAA has formally received the noise compatibility program for General Mitchell International Airport, also effective on September 23, 1994. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatability programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 22, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Minneapolis Airports District Office, Room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450

General Mitchell International Airport, Administration Office, 5300 South Howell Avenue, Milwaukee, Wisconsin 53207–6189

Chief Librarian, City of Oak Creek, 8620 South Howell Avenue, Oak Creek, Wisconsin 53154

Chief Librarian, City of St. Francis, 4235 South Nicholson Avenue, St. Francis, Wisconsin 53207

Chief Librarian, Tippecanoe Library, 3912 South Howell Avenue, Milwaukee, Wisconsin 53207

Chief Librarian, City of Greenfield, 7215 West Coldspring Road, Greenfield, Wisconsin 53220

Chief Librarian, City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132

Chief Librarian, City of Cudahy, 4665 South Packard Avenue, Cudahy, Wisconsin 53110

Chief Librarian, City of Greendale, Village Hal, 5666 Broad Street, Greendale, Wisconsin 53219

Chief Librarian, City of South Milwaukee, 1907 10th Avenue, South Milwaukee, Wisconsin 53172

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Minneapolis, Minnesota, September 23, 1994.

Franklin D. Benson,

Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 94–25323 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier/ General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to, among other things, solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee (ARAC) in its deliberations

DATES: The meeting will be held on October 18, 1994, beginning at 7:30 p.m.

ADDRESSES: The meeting will be held as part of the Professional Aviation Maintenance Association's Small Wonder Chapter Meeting in the auditorium of Delcastle Technical High School, 1417 Newport Road, Wilmington, Delaware 19804.

FOR FURTHER INFORMATION CONTACT:

Ms. Christine Leonard, Professional Aviation Maintenance Association, 1008 Russell Lane, West Chester, PA 19382; telephone (610) 399–1744.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation rulemaking Advisory Committee in its deliberations with regard to a task assigned to ARAC by the Federal Aviation Administration. Specifically, the task is as follows:

Review Title 14 Code of Federal Regulations, parts 43 and 91, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of general aviation aircraft inspection and maintenance, specifically section 91.409, part 43, and Appendices A and D of part 43. In your review, consider any inspection and maintenance initiatives underway throughout the aviation industry affecting general aviation with a maximum certificated takeoff weight of 12,500 pounds or less. Also consider ongoing initiatives in the areas of: maintenance recordkeeping; research and development; the age of the current aircraft fleet; harmonization; the true cost of inspection versus maintenance; and changes in technology.

Attendance is open to the interested public but may be limited to the space available. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the meeting coordinator listed under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC on October 6, 1994.

Frederick J. Leonelli,

Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–25350 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 165, Twelfth Meeting; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 165 meeting to be held November 4, 1994, starting at 9:30 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) Welcome and introductions; (2) Approval of the summary of the eleventh meeting; (3) Chairman's remarks; (4) Consider for approval; DO–215, Change No. 1; (5) Other business; (6) 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, N.W., Suite 1020, Washington, D.C. 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 October 6, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–25313 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 184 Fourth Meeting, Minimum Performance and Installation Standards for Taxi-Hold Position Lights

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 184 meeting to be held November 9–10, 1994, starting at 9 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) Administrative announcements; (2) Chairman's introductory remarks; (3) Review and approval of meeting agenda; (4) Review and approve minutes of last meeting, RTCA Paper No. 412–94/SC184–12; (5) Review status of action items; (6) Review of draft document inputs; (7) Work group drafting session; (8) Other business; (9) Set agenda for next meeting; (10) Date and place of next meeting.

Reminder: RTCA Symposium, November 30—December 1, 1994.

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, DC, on October 4, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–25322 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–M

Certificate Management Office at Phoenix, AZ; Notice of Relocation

Notice is hereby given that on or about August 26, 1994, the Certificate Management Office at 4122 E. Airlane Drive, Phoenix, Arizona 85034 will be relocating to 2800 N. 44th Street, Suite 450, Phoenix, Arizona 85008–1500. Services to the general public will continue to be provided by this office without interruption. This information will be reflected in the FAA organization Statement the next time it is reissued. (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354).

Issued in Hawthorne, CA, on October 5, 1994.

Larry Andriesen,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 94–25311 Filed 10–12–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 3, 1994

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0009.

Form Number: PD F 1851.

Type of Review: Extension.

Title: Request for reissue of United States Bonds/Notes in Name of Trustee of Personal Trust Estate.

Description: This form is used to request reissue of savings bonds/notes in the name(s) of the trustee(s) of a personal trust estate.

Respondents: Individuals or households.

Estimated Number of Respondents: 55,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 13,750 hours.

OMB Number: 1535–0068.

Form Number: None.

Type of Review: Extension.

Title: Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

Description: This information is needed to establish an investor's Treasury account, to dispose of securities upon the owner's request; and to determine entitlement to securities. The information will be used for those purposes. Respondents will be primarily individuals, although there may be some organizations and public bodies.

Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 75,000.

Estimated Burden Hours Per Response: 7 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,775 hours.

OMB Number: 1535–0087.

Form Number: None.

Type of Review: Extension.

Title: Payments by Banks and Other Financial Institutions of United States Savings Bonds and Notes (Freedom Shares).

Description: Qualified banks and financial institutions can redeem eligible savings bonds and notes, and receive settlement through EZ CLEAR, under which paid securities will be processed through the Fiscal Agency Department of a Federal Reserve Bank.

Respondents: Businesses or other for-profit, Non-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 48,430.

Estimated Burden Hours Per Response/Recordkeeper: 6 minutes, 4 seconds.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 69,287 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–25325 Filed 10–12–94; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

October 4, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0116.

Form Number: ATF F 2145 (5200.11).

Type of Review: Extension.

Title: Notice of Release/Return of Tobacco Products, Cigarette Papers and Tubes.

Description: ATF F 2145 (5200.11) documents the removal without payment of tax from U.S. Customs custody or return by a U.S. Government agency to bonded tobacco products factories and manufacturers of cigarette papers and tubes. The form identifies the establishment that is responsible for the tax on tobacco article products released from Customs custody, products returned and the authorizing Government official.

Respondents: Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations.

Estimated Number of Respondents: 153.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 306 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–25326 Filed 10–12–94; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

October 6, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Office, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0217.

Form Number: IRS Form 5735 and Schedule P (Form 5735).

Type of Review: Revision.

Title: Possessions Corporation Tax Credit Allowed Under Section 936 (Form 5735); Allocation of Income and Expenses Under Section 936(h)(5) (Schedule P).

Description: Form 5735 is used to compute the possessions tax credit under Section 936. Schedule P is used by corporations that elect to share the income or expenses with their affiliates Each form provides the IRS with information to determine if the corporations have correctly computed the tax credit and the cost-sharing or profit-split method.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,371.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 5735	Schedule P
Recordkeeping	19 hr., 8 min	10 hr., 2 min.
Learning about the law or the form	2 hr., 53 min	1 hr., 56 min.
Preparing the form	3 hr., 19 min	4 hr., 2 min.
Copying, assembling, and sending the form to the IRS	0 min	32 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 29,459 hours.

OMB Number: 1545–1142.

Regulation ID Number: INTL–0939–86 NPRM.

Type of Review: Extension.

Title: Insurance Income of a Controlled Foreign Corporation for Taxable Years beginning after December 31, 1986.

Description: The information is required to determine the location of moveable property; allocate income and deductions to the proper category of insurance income, determine those amounts for computing taxable income that are derived from an insurance company annual statement, and permit a CFC to elect to treat related person insurance income as income effectively connected with the conduct of a U.S. trade or business. The respondents will be businesses or other for-profit institutions.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1160.

Regulation ID Number: CO–93–90 Final.

Type of Review: Extension.

Title: Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock.

Description: These regulations prevent elimination of corporate-level tax because of the operation of the consolidated returns investment adjustment rules. Statements are required for dispositions of a subsidiary's stock for which losses are claimed, for basis reductions within 2 years of the stock's deconsolidation, and for elections by the common parent to retain the NOL's of a disposed subsidiary.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Other (One Time).

Estimated Total Reporting Burden: 6,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–25327 Filed 10–12–94; 8:45 am]

BILLING CODE 4830–01–M

Departmental Offices

Privacy Act of 1974, as amended; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury (Department) gives notice of a newly proposed Treasury-wide system of records, Telephone Call Detail Records—Treasury/DO .211. Two existing systems of records will be removed from the Treasury's inventory of Privacy Act systems when the Treasury-wide notice is effective.

DATES: Comments must be received no later than November 14, 1994. The proposed system of records will be effective November 22, 1994, unless the Department receives comments which would result in a contrary determination.

ADDRESSES: Comments should be sent to Office of Telecommunications Management, Department of the Treasury, Room 2150, 1425 New York Avenue, NW, Washington, DC 20220. Comments will be made available for inspection and copying in the Treasury Department library. An appointment for inspecting the comments can be made by contacting the library at (202) 622–0980.

FOR FURTHER INFORMATION CONTACT: Nelson Hughes, Office of Telecommunications Management, Department of the Treasury, Room 2150, 1425 New York Avenue, NE, Washington, DC 20220. Telephone number (202) 622–1562.

SUPPLEMENTARY INFORMATION: This report is to give notice of a proposed new Treasury-wide system of records entitled Telephone Call Detail Records—Treasury/DO .211 which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

The Department is establishing the Telephone Call Detail Records system to enhance its ability to assess employee use of the telephone system provided by the Department. Since parts of this system are retrieved by individual identifier, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records to the public. The information may be used for telecommunication traffic studies, cost projections or other management studies and to enable the Department to verify call usage, determine responsibility for placement of specific long distance and/or local calls, and detect possible abuse of the government-provided long distance network. The records generated by the telephone systems used by the Department may identify individual telephone numbers and, in some instances, individual users. The records may also identify the originating number from which long distance and local calls are made. This system may contain telephone assignment records, results of administrative inquiries to determine responsibility for the placement of specific local or long distance calls if waste, fraud or abuse patterns are detected, or other records as required by individual components. The Department will maintain these records to further the Government's fiscal responsibility and accountability provision.

The Privacy Act notices covering the comptroller of the Currency's Telephone Usage Information System (TUIS)—Treasury/CC .315 and the Internal Revenue Service's FTS2000 On-line Certification of Usage System (FOCUS)—Treasury/IRS 24.100 are duplicative of the proposed Treasury-wide system of records and will be incorporated into the Treasury-wide system. In accordance with OMB Circular A–130, the two existing notices will be deleted from the Treasury Department's inventory of systems of records. The notice for Treasury/CC .315 was last published at 57 FR 13943 dated April 17, 1992. The notice for Treasury/IRS 24.100 was last published at 58 FR 64350 dated December 6, 1993.

The new system of records report, as required by 5 U.S.C. 551a(r) of the Privacy Act, has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated July 15, 1994.

The following Privacy Act notices: Comptroller of the Currency's Telephone Usage Information System (TUIS)—Treasury/CC .315, and Internal Revenue Service's FTS2000 On-line Certification of Usage System (FOCUS)—Treasury/IRS 24.100 are removed.

The proposed Treasury-wide system of records Telephone Call Detail Records—Treasury/DO .211 is published in its entirety below.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

Treasury/DO .211

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Department of the Treasury, 1425 New York Avenue, NW, Washington DC 20220. Other locations of this records system consisting of the following Treasury components and their associated field offices are: Departmental Offices (DO), including the Office of Inspector General (OIG); Bureau of Alcohol, Tobacco and Firearms (ATF); Comptroller of the Currency (CC); United States Customs Service (CS); Bureau of Engraving and Printing (BEP); Federal Law Enforcement Training Center (FLETC); Financial Management Service (FMS); Internal Revenue Service (IRS); United States Mint (Mint); Bureau of the Public Debt (BPD); United States Secret Service (USSS), and the Office of Thrift Supervision (OTS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally agency employees and contractor personnel) who make local and/or long distance calls, individuals who received telephone calls placed from or charged to agency telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of Department telephones to place local and/or long distance calls, whether through the Federal Telecommunications System (FTS), commercial systems, or similar systems; including voice, data, and videoconference usage; Foncard numbers assigned to employees; records of any charges billed to Department telephones; records relating to location of Department telephones; and the results of administrative inquires to determine responsibility for the placement of specific local or long distance calls. Telephone calls made to any Treasury Office of Inspector General Hotline numbers are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., Appendix 3, Section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 481, 5 U.S.C. 301 and 41 CFR 201–21.6.

PURPOSE(S):

The Department, in accordance with 41 CFR 201–21.6, Use of Government Telephone Systems, established the Telephone Call Detail program to enable it to analyze call detail information for verifying call usage, to determine responsibility for placement of specific long distance calls, and for detecting possible abuse of the government-provided long distance network.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

These records and information from these records may be disclosed: (1) To representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under authority of 44 U.S.C. 2904 and 1906; (2) to employees or contractors of the agency to determine individual responsibility for telephone calls; (3) to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (4) to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings where relevant and necessary; (5) to a telecommunications company providing telecommunication support to permit servicing the account; (6) to another Federal agency to effect an interagency salary offset, or an interagency administrative offset, or to a debt collection agency for debt collection services. Mailing addresses acquired from the Internal Revenue Service may be released to debt collection agencies for collection services, but shall not be disclosed to other government agencies; (7) to the Department of Justice for the purpose of litigating an action or seeking legal advice; (8) in a proceeding before a court, adjudicative body, or other administrative body, before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to the litigation or has an interest in such litigation, and the use of such records by the agency is deemed relevant and necessary to the litigation or administrative proceeding and not otherwise privileged; (9) to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (10) to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions or grievances or conducting administrative hearings or appeals or if needed in the performance of other authorized duties; (11) to the Defense Manpower Data Center (DMDC), Department of Defense, the U.S. Postal Service, and other Federal agencies through authorized computer matching programs to identify and locate individuals who are delinquent in their repayment of debts owed to the Department, or one of its components, in order to collect a debt through salary or administrative offsets; (12) in response to a Federal agency's request made in connection with the hiring or retention of an individual, issuance of a security clearance, license, contract, grant, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 522a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microform, electronic media, and/or hard copy media.

RETRIEVABILITY:

Records may be retrieved by individual name, component headquarters and field offices, by originating or terminating telephone number, by Foncard number, by time of day, identification number or assigned telephone number.

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual components.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration General Records Schedule 23. Hard copy and microform media disposed by shredding or incineration. Electronic media erased electronically.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices—Director, Office of Telecommunications Management, Department of the Treasury, Room 2150, 1425 New York Avenue NW, Washington, DC 20220. The system managers for the Treasury components are:

Do: Chief, Telecommunications Branch, Automated Systems Division, Room 1121, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

OIG: Assistant Inspector General for Policy, Planning and Resources, Office

of the Inspector General, Department of the Treasury, Room 7119, 1201 Constitution Avenue NW., Washington, DC 20220.

ATF: Chief, Telecommunications Services Branch, 650 Massachusetts Avenue NW, Washington, DC 20552.

CC: Associate Director, Telecommunications, Systems Support Division, Office of the Comptroller of the Currency, 835 Brightseat Road, Landover, MD 20785.

CS: Chief, Voice Communications, Office of Systems Engineering and Operations, Field Office Division, 7681 Boston Boulevard, Springfield, VA 22153.

BEP: Deputy Associate Director (Chief Information Officer), Office of Information Systems, Bureau of Engraving and Printing, Room 711A, 14th and C Street SW, Washington, DC 20228.

FLETC: Information Systems Officer, Information Systems Division, ISD-Building 94, Glynco, GA 31524.

FMS: Manager, Programs Branch, Room 135, 3700 East West Highway, Hyattsville, MD 20782.

IRS: Official prescribing policies and practices—National Director, Network and Systems Management, Internal Revenue Service, 111 Constitution Avenue NW, Washington, DC 20224. Office maintaining the system—Director, Detroit Computing Center, (DCC), 1300 John C. Lodge Drive, Detroit, MI 48226.

Mint: Assistant Director for Management Services, Telecommunications Division, 633 3rd Street NW, Washington, DC 20220.

BPD: Official prescribing policies and practices—Assistant Commissioner (Office of Automated Information Systems), 200 Third Street, Room 202, Parkersburg, WV 26106–1328. Office maintaining the system—Division of Technical Services, 200 Third Street, Room 107, Parkersburg, WV 26106–1328.

USSS: Chief, Information Resources Management Division, 1800 G Street NW, Room 1000, Washington, DC 20223.

OTS: Assistant Director for Information Resources Management, 1700 G Street NW, 2nd Floor, Washington, DC 20552

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Telephone assignment records, call detail listings, results of administrative inquiries to individual employees, contractors or offices relating to assignment of responsibility for placement of specific long distance or local calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–25328 Filed 10–12–94; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Tax on Certain Imported Substances (Dimethyl-2,6-Naphthalene Dicarboxylate); Notice of Determination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include dimethyl-2,6-naphthalene dicarboxylate.

EFFECTIVE DATE: This modification is effective April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On October 5, 1994, the Secretary determined that dimethyl-2,6-naphthalene dicarboxylate should be added to the list of taxable substances in section 4672(a)(3), effective April 1, 1995.

The rate of tax prescribed for dimethyl-2,6-naphthalene dicarboxylate, under section 4671(b)(3) is $5.97 per ton. This is based upon a conversion factor for xylene of 0.690, a conversion factor for butadiene of 0.390, and a conversion factor for methane of 0.208.

The petitioner is Amoco Corporation, a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

HTS number: 2917.39.50

CAS number: 840–65–3

Dimethyl-2,6-naphthalene dicarboxylate is derived from the taxable chemicals xylene, butadiene, and methane. Dimethyl-2,6-naphthalene dicarboxylate is a solid produced predominantly by esterification of naphthalene dicarboxylic acid (2,6–NDA). 2,6–NDA is made by air oxidation of dimethyl naphthalene (2,6–DMN). 2,6–DMN is prepared via the alkenylation of orthoxylene acid butadiene.

The stoichiometric material consumption formula for dimethyl-2,6-naphthalene dicarboxylate is:

C_8H_{10} (xylene) + C_4H_6 (butadiene) + 2 CH_4 (methane) + 4 O_2 (oxygen) >> $C_{14}H_{12}O_4$ (dimethyl-2,6-naphthalene dicarboxylate) + 2 H_2 (hydrogen) + 4 H_{20} (water)

Dimethyl-2,6-naphthalene dicarboxylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 60 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–25248 Filed 10–12–94; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Greek Gold: Jewelry of the Classical World" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art from on or about November 29, 1994, through March 25, 1995, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: October 7, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–25351 Filed 10–12–94; 8:45 am]

BILLING CODE 8230–01–M

Central and Eastern European Training Program (CEETP–5)

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to develop training programs in the areas of (1) local government/public administration, (2) independent media development, and (3) business administration. These projects should link the U.S. organization's international exchange interests with counterpart institutions and groups in Albania, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovak Republic and Slovenia.

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning, Assistant General Counsel, at 619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Support for Eastern European Democracies (SEED) program.

Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

Interested applicants should read the complete **Federal Register**.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number *E/P–95–19*.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on 5 p.m., December 9, 1994. Faxed documents will not be accepted, nor will documents postmarked on December 9, 1994 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. CEETP–5 grant project activity should begin after July 1, 1995.

FOR FURTHER INFORMATION CONTACT: European Division, Office of Citizen Exchange (E/P), Room 216, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, telephone 202/619–5319, fax 202/619–4350, internet (CMINER@USIA.GOV) to request an Application Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the USIA Program Officer Chris Miner on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, Ref.: E/P–95–19, Office of Grants Management, E/XE, Room 336, 301 4th Street SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview: Proposals must be for projects which encourage the growth of democratic institutions and political and economic pluralism. Listed in order of priority are the areas in which USIA is interested in receiving proposals: (1) local government/public administration, (2) independent media development, and (3) business administration. Projects should lay the groundwork for new and continuing links between American and Central/Eastern European professionals organizations.

Projects may include: study tours in the U.S. for small groups; short-term non-technical workshops conducted in Central/Eastern Europe; and four- to ten-week internships in the U.S.; consultations in Central/Eastern Europe.

All proposals should demonstrate:

(1) In-depth, substantive knowledge of the issues of concern to these countries;

(2) Established connections with the partner institutions;

(3) The capacity to organize and conduct the program, including appropriate orientation activities for the participants; detailed work plan for all phases of the project; tentative agendas for study tours, workshops, and internships; letters of commitment from internship hosts; and selection procedures. Applicants should consult the USIS office at the U.S. embassies before submitting proposals.

USIA will give priority to proposals from U.S. organizations with partner organizations in Central/Eastern Europe, which will assist logistically and will contribute to the realization of program

goals and objectives and will themselves to enhanced by the program. Applicants are encouraged to demonstrate partner relationships by providing copies of correspondence or other materials as appendices to the proposals.

The CEE partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing, transportation, interpreting, translating, and other local currency costs and to assist with the organization of projects.

Local Government

USIA is interested in proposals for training programs which will foster effective administration of local and regional governments. Programs might examine and seek to improve relationships among local executive, legislative, and judicial elements, or they might address the knowledge and skills necessary to administer one or more of these branches of local government.

Program topics might include one or more of the following: judicial administration, budget development, financial management, tax policies and mechanisms, election practices, management of municipal services, privatization of government property, consumer protection, business regulation (as opposed to control), licensing, and environmental protection. Programs might further the development of information and library systems relevant to local government, improve committee and staff structures, research capability, legislation drafting capability, structural and procedural needs of local governments. Training should be conducted mostly in local centers, preferably situated outside the capital cities.

Mass Media Development

The focus of the proposals should be directed toward the development of a free and independent media.

Programs in this general topic fall under two training subcategories: working reporters and media business management. Preference will be given to mass media training programs which contain a U.S. internship component. For training programs in CEE, preference will be given to those of at least two weeks duration; they could focus on either basic journalism or business management techniques. Training, especially for journalists outside of the CEE capital cities, should emphasize skills such as effective writing, investigative reporting, objectivity, evaluation of sources, clear labelling of editorials and opinion pieces, conformance to copyright laws, and ethics.

Media management training (both print and broadcast) should focus on management of media as a profitable business. Topics to be addressed might include management techniques, desk top publishing, advertising, marketing, distribution, public relations, staff development, accountability, and the pitfalls of journalistic advocacy, among others.

Business Administration

While this topic is broad, proposals should focus primarily on management training, small business development (including incubators and Small Business Centers), agri-business, banking, credit practices, financial management, marketing management, industrial relations, and/or privatization.

Program design should clearly differentiate CEE target audiences, such as professors and instructors of economics, senior business leaders, government officials, or promising practitioners, and demonstrate how the proposed agenda addresses the selected audience(s).

USIA has a strong interest in programs on the development of business structures and the creating of jobs in non-urban areas.

Scope

Proposals should limit their focus to one of the CEE countries and to one of the three major topics: local governance, independent media development, or business administration. Proposals for programs that are broader in scope will be eligible, but are less likely to receive USIA support. USIA will consider geographic distribution in selecting grantee institutions to ensure a wide distribution of this program.

USIA encourages proposals which feature "train-the-trainers" models' the creation of indigenous training centers; schemes to create professional networks or professional associations to disseminate information; and other enduring aspects.

Guidelines: Selection of Participants. All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. Programs that include internships in the U.S. should provide letters tentatively committing host institutions to support the internships. In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to approve or reject participants recommended by the program institution. Programs must also comply with J–1 visa regulations. Please refer to program specific guidelines in the Application Package for further details.

USIA does not support proposals limited to conferences or seminars (i.e., one- to fourteen-day programs with plenary sessions, major speakers, and panels with a passive audience). It will support conferences only insofar as they are a minor part of a larger project in duration and scope which is receiving USIA funding from this competition. Furthermore, USIA will not support research projects or projects limited to technical issues. Publications intended for dissemination in the United States, individual student exchanges, film festivals or exhibits are also not eligible for support. In addition, this Office will not provide scholarships or other support for long-term (i.e. a semester or more) academic studies. Proposals that request support for the development of university curriculums or for degree-based programs will not be eligible under this RFP.

Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/A) under the University Affiliation Program and should not be submitted under this RFP.

Competitions sponsored by other offices of USIA's Bureau of Educational and Cultural Affairs are also announced in the **Federal Register**, and may have different guidelines or restrictions.

Proposed budget: The amount requested from USIA should not exceed $200,000. However, exchange organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. Please refer to the Application Package for complete formatting instructions. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Please note: All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Allowable costs for the program include the following:

(1) International and domestic air fares; visas; transit costs; and ground transportation costs.

(2) Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. For activities in Central/Eastern Europe, the Federal per diem rates must be used.

(3) Interpreters. Interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each DOS interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

(4) Book and cultural allowance. Participants and escorts are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. U.S. staff do not get these benefits.

(5) Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

(6) Room rental should not exceed $250 per day.

(7) One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; this includes room rental if applicable. The number of invited guests may not exceed participants by more than a factor of two to one.

(8) A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

(9) Audit Requirements. The proposal shall include the cost of an audit that:

a. Complies with the requirements of OMB circular No. 1–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

b. Complies with the requirements of American Institute of Certified Public Accountants (AICPA) statement of Position (SOP) No. 92–9; and

c. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

a. Preparation of basic financial statements, and other accounting services; and

b. Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

11. Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contributions to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching" and should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's, contribution. Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Application Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertaking and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both the organization and the program activities.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Thematic and Area Expertise:* Proposals should demonstrate the organization's expertise in the subject area. Evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as relevant knowledge of target area/country, should also be shown.

9. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

10. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate

reports after each project component is concluded or quarterly, whichever is less frequent.

11. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

12. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

13. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 1, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: October 5, 1994.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 94–25215 Filed 10–12–94, 8:45 am]

BILLING CODE 8230–01–M

Management of English Teaching Fellow Program

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Academic Programs, English Language Programs Division, Programs Branch of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to conduct the recruitment, placement and management of 30–40 English teaching Fellows (ETFs). The exact number of ETFs will be contingent upon the amount of cost sharing by overseas posts who wish to host a fellow and by the availability of funds. The fellows will serve as full-time teachers of English as a Foreign Language, as materials or test developers or as teacher trainers in countries around the world.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hayes Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hayes Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ALP–95–01.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, November 21, 1994. Faxed documents will not be accepted, nor will documents postmarked on November 21, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, English Language Programs Division, E/ALP-Room 304, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone number 202–619–5869, fax number 202–401–1250, to request an Application Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the USIA Program Specialist Cathy Siemonh on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Academic Programs, English Language Programs Division, Programs Branch or submitting their proposals. Once the RFP deadline has passed, the Office of Academic Programs, English Language Programs Division, Programs Branch may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, Ref.: E/ALP–95–01, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The U.S. Information Agency (USIA) is soliciting proposals from U.S. professional, not-for-profit institutions/organizations to recruit, place and manage 30–40 English Teaching Fellows who will serve as full-time teachers of English as a Foreign Language, as materials or test developers or as teacher trainers in countries around the world. The English Teaching Program is designed to increase the American presence, enhance the American cultural component, and improve academic standards at universities, teacher-training colleges, binational centers, and other post-selected institutions with English teaching programs. The program enables recent recipients of M.A.'s in teaching English as a foreign/second language (TEFL/TESL) to acquire overseas teaching experience, while providing host institutions with up-to-date professional expertise in the methods and theory of English teaching.

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines in the Application Package for further details.

Proposed Budget

The proposal must contain a specific and detailed line-item budget. The budget should be constructed in such a way as to reflect the task of recruiting and placing 30–35–40 fellows, and carrying out follow-up activities. At this time the Agency has not determined the full funding level for FY'95.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. Please refer to the Application Package for complete formatting instructions. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following: The salary and remuneration for the English Teaching Fellows are broken down below. The living allowance is variable and is to be negotiated in relation to the city/country of assignment.

Basic Stipend $12,000
Living allowance $6,000 average
Travel $3,400 average
Excess Baggage/Shipping $400
Pre-departure Allowance $500
Educational Materials $300
Per Diem for Orientation $144 per day average

Please refer to the Application Package for complete budget guidelines

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Application Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both the organization and the program activities.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

13. TEFL/TESL Background: Must possess a proven ability to network that provides and allows for the greatest dissemination of information to and among the profession of Teachers of English as a Second or Foreign Language; must be able to provide knowledgeable, TEFL-qualified, experienced staff capable of interviewing candidates and evaluating their qualifications for teaching, and/or for developing materials, or for conducting teacher-training in the context of English as a foreign language, in accord with criteria established by USIA.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about January 23, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: October 7, 1994.

Dell Pendergrast,

Deputy Associate Director Educational and Cultural Affairs.

[FR Doc. 94–25393 Filed 10–12–94; 8:45 am]
BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Establishment of Dispute Settlement Panel Concerning U.S. Standards for Reformulated and Conventional Gasoline

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the Council of Representatives of the General Agreement on Tariffs and Trade (GATT) has decided, pursuant to a request by the Government of Venezuela, to establish a dispute settlement panel to review the complaint by Venezuela against the U.S. Environmental Protection Agency's (EPA) Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline, signed on December 15, 1993 (59 FR 7716; February 16, 1994) ("Final Rule").

FOR FURTHER INFORMATION CONTACT:

Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, or Rachel Shub, Assistant General Counsel, Office of the General Counsel, USTR, 600 17th Street, NW Washington, DC 20506, (202) 395–7305.

SUPPLEMENTARY INFORMATION: USTR is providing notice of the request for, and establishment of, a dispute settlement panel to examine the consistency of EPA's Final Rule with the obligations of the United States under the GATT. Venezuela is the complaining party in this dispute, and the European Community, Canada, Norway and Australia have reserved their rights to intervene in the panel proceedings as third parties.

Venezuela has asked the panel to review the compatibility of the Final Rule with the provisions of Articles I, III, VIII, and XI of the GATT.

Members of the panel are currently being selected. Once the panel has been formed, it is expected to meet as necessary at the GATT headquarters in Geneva, Switzerland, to consider information relevant to the dispute. The panel will then provide a report to the GATT Council detailing its findings and recommendations.

Ira S. Shapiro,

General Counsel.

[FR Doc. 94–25380 Filed 10–12–94; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–93]

Initiation of Section 302 Investigation and Request for Public Comment: Barriers To Access to the Auto Parts Replacement Market in Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2412(b)(1)(A); request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, polices and practices of the Government of Japan that restrict or deny U.S. auto parts suppliers' access to the auto parts replacement and accessories market ("after-market") in Japan. USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on October 1, 1994. Written comments from the public are due on or before noon on November 10, 1994.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David Burns, Director, Japan Affairs, (202) 395–5050, or James Southwick, Assistant General Counsel, (202) 295–7203.

SUPPLEMENTARY INFORMATION: Section 302(b)(1)(A) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as "section 301"), with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia*, acts, policies, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce. An act, policy or practice is unreasonable if the act, policy or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair or inequitable. Unreasonable acts, policies or practices include, *inter alia*, denial of fair and equitable market opportunities.

On October 1, 1994, USTR determined that an investigation should be initiated to determine whether specific barriers to access to the after-market for auto parts in Japan are unreasonable or discriminatory and burden or restrict U.S. commerce. The barriers subject to investigation include Japanese Government regulations such as the so-called "critical parts" and "alteration regulations and the certification system for garages and mechanics. These regulations are vague and very broad in scope. They support and work in combination with market restrictive practices by Japanese auto companies and parts distributors substantially to limit foreign access to the Japanese auto parts after-market, particularly for foreign parts suppliers unable to sell original equipment to Japanese auto manufacturers. U.S. parts suppliers could significantly expand sales to the Japanese after-market if the critical parts and alteration regulations were made clearer and less restrictive.

Investigation and Consultations

Pursuant to section 303(a) of the Trade Act, the USTR has requested consultations with the Government of Japan concerning the issues under investigation. USTR will seek information and advice from the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Pursuant to section 304 of the Trade Act, the USTR must determine within 12 months after the date on which this investigation was initiated (i.e., on or before October 1, 1995), on the basis of the investigation and the consultations, whether any act, policy, or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments on the acts, policies and practices of the Government of Japan that are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than noon on November 10, 1994. Comments must be in English and provided in twenty copies to: Office of the General Counsel, Attn: Auto Parts Investigation, Room 223, USTR, 600 17th Street, NW, Washington, DC 20506.

Comments will be placed in a file (Docket 301–93) open to public inspection pursuant to 15 CFR 2006.13, except confidential business

information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–25381 Filed 10–12–94; 8:45 am]

BILLING CODE 3190–01–M

Notice of Termination of Sanctions With Respect to Japan Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the United States Trade Representative.

ACTION: Termination of sanctions scheduled to be imposed on Japan pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988.

SUMMARY: On October 4, 1994, the United States Trade Representative determined that sanctions, scheduled to go into effect on Japanese goods and services on September 30, 1994, under Title VII of the Omnibus Trade and Competitiveness Act of 1988, should be terminated, effective September 30, 1994, as a result of an agreement between the United States and Japan relating to procurement of telecommunications and medical technology goods and services.

FOR FURTHER INFORMATION CONTACT: Wendy Silberman, Office of Japan and China Affairs (202–395–3900), or Laura B. Sherman, Office of the General Counsel (202–395–3150), Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On July 31, 1994, the Administration cited Japan under Title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515, as amended) as a country that maintains, in government procurement of telecommunications and medical technology goods and services, a significant and persistent pattern or practice discrimination against U.S. products or services that results in identifiable harm to U.S. businesses. Title VII provides that if the identified practices are not satisfactorily addressed during a 60-day consultation period, then the President must formally identify the country and the statutory sanctions take effect on the following day.

On October 1, 1994, the Governments of the United States and Japan reached an agreement relating to procurement of telecommunications and medical technology goods and services. The Japanese Government agreed to adopt improved procurement measures. These new measures and an accompanying exchange of letters between the United States and Japan address all the major U.S. concerns in the telecommunications and medical technology sectors. The United States Trade Representative (USTR) concluded that implementation of the improved measures and the accompanying exchange of letters will eliminate the discrimination identified under Title VII. Based on delegation of authority from the President, the USTR terminated sanctions effective September 30, 1994. A copy of the USTR's determination is attached.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

Determination Under Title VII of the Omnibus Trade and Competitiveness Act

On July 31, 1994, the United States identified Japan under Title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515, as amended) as a country that maintains, in government procurement of telecommunications and medical technology goods and services, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses. Since that time, we have held intensive discussions with the Government of Japan to resolve the identified discriminatory practices.

Sanctions were scheduled to go into effect on September 30, 1994. On October 1, 1994 the United States reached an agreement with the Government of Japan relating to procurement of telecommunications and medical technology goods and services, which will address the discrimination identified by the United States. The procurement measures to be implemented by the Government of Japan and an accompanying exchange of letters between the United States and Japan represent a significant change in Japanese Government practices in the procurement of telecommunications and medical technology goods and services and address all the major U.S. concerns in these sectors.

Pursuant to the authority vested in me by the President of the United States by Presidential Determination No. 94–52 of September 29, 1994, I have determined that implementation of the agreement with Japan will eliminate the discrimination identified under Title VII and therefore terminated sanctions effective September 30, 1994.

Dated: October 4, 1994.

Michael Kantor,

United States Trade Representative.

[FR Doc. 94–25352 Filed 10–12–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 197
Thursday, October 13, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 18, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, October 20, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Final Audit Report on the Buchanan for President Committee
Advisory Opinion 1994-30: Edward D. Feigenbaum on behalf of Conservative Concepts, Inc. (continued from meeting of October 6, 1994).
Regulation:
MCFL Rulemaking: Summary of Comments and Draft Final Rules (continued from meeting of October 6, 1994).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94-25531 Filed 10-11-94; 3:43 pm]

BILLING CODE 6715-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 1:00 p.m., November 7, 1994.

PLACE: Uniformed Services University of the Health Sciences, Room D3001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: 1:00 p.m. Meeting—Board of Regents.

(1) Approval of Minutes—August 8, 1994; (2) Awards; (3) Faculty Matters; (4) Departmental Reports; (5) Financial Report; (6) Report—President, USUHS; (7) Comments—Chairman, Board of Regents. New Business.

CONTACT PERSON FOR MORE INFORMATION: Bobby D. Anderson, Executive Secretary of the Board of Regents 301/295-3116.

Dated: October 7, 1994.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-25494 Filed 10-11-94; 1:22 pm]

BILLING CODE 5000-04-M

federal register

Thursday
October 13, 1994

Part II

Department of Education

34 CFR Part 682

Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC09

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program regulations. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan Programs. These amendments are needed to implement certain changes made to the Higher Education Act of 1965, as amended (HEA), by the Omnibus Budget Reconciliation Act of 1993, enacted August 10, 1993, and by the Higher Education Technical Amendments of 1993, enacted December 20, 1993. The proposed regulations would also amend the FFEL Program regulations to permit a lender to issue a "master check" to an institution for purposes of disbursing Federal Stafford loan proceeds to an institution, to prohibit a subsequent holder of a loan to bill the Secretary for any applicable interest benefits or special allowance on a loan for which origination fees have not been paid, and to limit the collection charges that may be assessed a borrower with a defaulted loan that is paid off through loan consolidation. The proposed regulations would implement section 428(n) of the HEA as amended by OBRA which requires a State to share the costs of defaulted Federal Stafford and Federal SLS loans with the Federal government.

DATES: Comments must be received on or before November 14, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Patricia Newcombe, Chief, Federal Family Education Loan Program Section, Loans Branch, U.S. Department of Education, 600 Independence Avenue, SW., room 4310, Regional Office Building 3, Washington, DC 20202–5343. Comments may also be sent through the internet to "FFEL—OBRA@ed.gov."

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas D. Laine, Program Specialist, Federal Family Education Loan Program Section, Loans Branch, U.S. Department of Education, 600 Independence Avenue, SW., room 4310, Regional Office Building 3, Washington, DC 20202–5343, telephone: (202) 708–8242. 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:

Background

The FFEL Program regulations (34 CFR Part 682) govern the Federal Stafford Loan Program, the Federal SLS Program, the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly the Guaranteed Student Loan programs).

The Secretary is proposing to revise 34 CFR Part 682 to implement changes made to the HEA by the Omnibus Budget Reconciliation Act of 1993 (OBRA) (Pub. L. 103–66) and the Higher Education Technical Amendments of 1993 (the Technical Amendments)(Pub. L. 103–208). OBRA added section 428(n) to the HEA to require a State to pay a fee to the Secretary based on the State's new FFEL loan volume and the dollars associated with the most recent cohort default rates calculated for schools in that State. This provision is intended to encourage a State to ensure that its educational institutions provide quality services to their students. A State may achieve this objective through licensing and State Postsecondary Review Entities. This provision is also intended to partially offset the cost to the Federal government of paying student loan default claims.

These proposed regulations would also amend the FFEL Program regulations to reflect certain other changes made to the HEA by OBRA. The Secretary proposes to amend the regulations to reflect statutory provisions providing for the payment of lender referral fees to guaranty agencies, the reduction of the reinsurance coverage and reinsurance rates for a guaranty agency's losses on default claims and the reduction of insurance coverage a guaranty agency may pay on default claims.

These proposed regulations would also amend the FFEL Program regulations to reflect certain changes to the HEA by the Technical Amendments. These changes require a lender to rebate excess interest on certain Federal Stafford loans to either the borrower or the Secretary and require lenders to convert the interest rates on certain Federal Stafford loans to a variable interest rate.

These proposed regulations would also amend the FFEL Program regulations to permit a lender to disburse Federal Stafford loan proceeds to a school via a master check. This change is needed to facilitate a lender's ability to disburse Federal Stafford loans. These proposed regulations would also prohibit a subsequent holder of a loan to bill the Secretary for any applicable interest benefits or special allowance on a loan for which origination fees have not been paid. This change is needed to ensure that origination fees are paid on a loan if the loan is sold by considering the loan ineligible for reinsurance if such fees are not paid. These proposed regulations would also limit the collection charges that may be assessed a borrower with a defaulted loan that is paid off through loan consolidation. This change will encourage a borrower to get his or her loan out of default for purposes of Title IV eligibility by having it paid off through consolidation.

The proposed regulations would delete current § 682.407—Administrative Cost Allowance for Guaranty Agencies. This section is no longer needed because OBRA removed the Secretary's authority for paying an administrative cost allowance to a guaranty agency from the HEA.

Proposed Regulatory Changes

The following summarizes the major changes in this notice of proposed rulemaking:

Section 682.202 Permissible charges by lenders to borrowers.

The proposed regulations would implement the requirements of section 427A(i) of the HEA as amended by the Technical Amendments. The changes in this section reflect the new statutory language that requires lenders to return excess interest to certain Stafford loan borrowers or the Secretary and requires the conversion of the interest rate on certain Federal Stafford loans to a variable interest rate.

Section 682.207 Due diligence in disbursing a loan.

The proposed regulations would extend a provision of the FFEL Program regulations that were published on June 28, 1994 (59 FR 33334) that permitted the use of a master check for purposes of disbursing PLUS loans to the Federal Stafford loan programs. This proposed rule would allow a lender to use a master check to disburse Federal Stafford loans, thereby facilitating their disbursement. A "master check" is a

check representing the disbursement of loan proceeds for more than one borrower. If a master check is used, the lender must provide the school with a list of the borrower's names, social security numbers, and the loan amounts disbursed through the master check. The proposed regulations would also require a lender to provide a school with a list of the borrowers' names, social security numbers, and the loan amounts if the loans are disbursed by electronic funds transfer.

Section 682.305 Procedures for payment of interest benefits and special allowance.

The proposed regulations would amend the FFEL Program regulations to require an originating lender to pay origination fees to the Secretary. In many cases, the Secretary is not recovering the origination fees from the originating lender or any subsequent holder of a loan when the loan is sold. A June 1994 report conducted by the General Accounting Office and the Office of the Inspector General (GAO/AIMD–94–131 and ACN 17–30302) has identified this as a potentially serious area of abuse that may be costing the Department a significant amount of money. The Secretary has decided that regulatory controls are needed to help reduce the incidence of abuse in this area. Therefore, in addition to the proposed rule that would require the originating lender to pay origination fees, the proposed regulations would also prevent a subsequent holder of a loan for which the origination fees were not paid from receiving any interest benefits or special allowance on that loan, or a guaranty agency from receiving reinsurance payments from the Secretary on that loan, until the origination fees have been paid.

Section 682.401 Basic program agreement.

The proposed regulations are needed to implement section 428(e) of the HEA. Under this section, the Secretary will pay a lender referral fee to each guaranty agency with whom the Secretary has a lender referral agreement in an amount equal to 0.5 percent of the principal amount of a loan made as a result of the agency's referral services.

The proposed regulations would also change the regulations to reflect a change made by OBRA to section 428(b)(1)(G) of the HEA that limits a guaranty agency to paying 98 percent of the unpaid principal balance of each loan on default claims on loans disbursed on or after October 1, 1993.

The proposed regulations would add a new paragraph to the regulations that would limit the amount of collection charges and late fees a guaranty agency may guarantee when a defaulted loan is consolidated. Under the proposed regulations, a guaranty agency may not guarantee a consolidation loan that includes a defaulted loan if the collection fees and late charges assessed the borrower on the defaulted loan being consolidated exceeds 18.5 percent of the outstanding principal and interest on the defaulted loan at the time the pay-off amount of the loan is certified to the consolidating lender. The Secretary is proposing this provision to limit the amount of collection fees and late charges that a borrower may be liable for on a defaulted FFEL Program loan if such loan is consolidated. Because collection charges and late fees may be as high as 42 percent of the outstanding principal and interest of a defaulted loan, the Secretary is proposing this limitation to encourage a borrower to pay off a defaulted loan through loan consolidation and bring the loan out of default for purposes of title IV eligibility.

Section 682.404 Federal reinsurance agreement.

The proposed regulations would amend this section of the regulations to reflect a change made by OBRA to section 428(c)(1) of the HEA that reduces the percentages the Secretary will reinsure on a guaranty agency's default claims on loans made on or after October 1, 1993 from 100, 90, and 80 percent to 98, 88, and 78 percent, respectively, with two exceptions. First, the Secretary will reinsure loans at 100, 90, or 80 percent that are transferred from an insolvent guaranty agency or from an agency that withdraws its participation in the FFEL Program, under a plan approved by the Secretary. Second, the Secretary will provide 100 percent reinsurance for loans made under an approved lender-of-last-resort program.

Section 682.418 State share of default costs.

This proposed rule would add a new § 682.418 to the FFEL Program regulations to implement a change made by OBRA to section 428(n) of the Higher Education Act of 1965 (HEA). This provision requires a State to pay a fee to the Secretary if a school located in that State has a cohort default rate that exceeds 20 percent. The purpose of this fee is to partially offset the cost to the Federal government of paying default claims on FFEL Program loans by requiring a State to share the cost of defaults by student borrowers attending schools in the State. A State will be required to pay the fee to the Secretary within 60 days after the date it is notified by the Secretary of the fee it must pay.

Section 428(n) mandates a formula for the Secretary to use to determine the amount of the State's fee. The State's fee is calculated by multiplying the State's new loan volume for FFEL Program loans for all schools in the State for the current fiscal year by 12.5 percent, and multiplying that result by the sum of the amounts calculated as explained in the following paragraph for each school in the State with a cohort default rate that exceeds 20 percent. That result is then divided by the amount of loan volume attributable to current and former students of schools in that State who entered repayment during the fiscal year used in calculating the cohort default rates. Under section 428(n), the amount by which the State's new loan volume is multiplied increases from 12.5 percent to 20 percent in fiscal year 1996 and to 50 percent in fiscal year 1997 and succeeding fiscal years.

The amount by which a school exceeds the 20 percent default standard for this calculation is the amount of loan volume in default for the cohort default rate for the school minus 20 percent of the loans attributable to current and former students of the school who entered repayment during the fiscal year used in calculating the cohort default rate.

The statutory requirements are more clearly represented using the following formula:

New Loan Volume$\times 0.125 \times \{[A - (B \times .2)] \div C\}$

A=Dollars in default attributed to the cohort default rate for all schools in the State that have rates that exceed 20 percent.

B=Dollars entering repayment attributed to the cohort default rate for all schools in the State that have rates that exceed 20 percent.

C=Dollars entering repayment attributed to the cohort default rate for all schools in the State.

The Secretary is considering the following approaches to implement the formula and is interested in public comment as to which approach would best implement the statute. The language in the statute indicates that the fee structure should be calculated using the new loan volume attributable to all institutions in the State for the current fiscal year. However, the Secretary will not know the final new loan volume data for a fiscal year until after the fiscal year has ended. The Secretary has

identified the following two options to implement the statute: (1) to use the new loan volume for the fiscal year that precedes the fiscal year in which the fee is determined; or (2) to estimate the new loan volume for the fiscal year during which the State is assessed a fee. Also, because the time of the year the Secretary will be determining the fee coincides with the time of the year cohort default rates are generally determined, the Secretary may be presented with the opportunity to use either the cohort default rates that are currently being issued, or the rates that were issued the previous year. Schools would have had the chance to appeal the rates that were issued in the previous year based on inaccurate data, while the newer rates will more likely reflect the school's current situation. The Secretary is interested in comments regarding which rate should be used if this situation arises.

The following example illustrates the application of the statutory formula and the resulting fee a State would be required to pay. If the new loan volume for a State is $100 million and $40 million of Stafford and SLS loans entered repayment during the fiscal year used for the relevant cohort default rates, and the dollars associated with the default rates of the schools in the State with cohort default rates above 20 percent is $10 million entering repayment and $4 million entering default, the State would pay $625,000 as a default offset fee for fiscal year 1995.

$$\$100m \times 12.5\% \times \{[\$4m - (\$10m \times .2)] \div \$40m\} = \$625,000$$

A State may charge a fee to schools located in the State that participate in the FFEL Program to defray the fee assessed the State by the Secretary. As required by the statute, the State's fee structure must be approved by the Secretary and be based on the relationship of the school's cohort default rate to the default fee assessed the State by the Secretary. A State may not develop its fee structure so that a school is assessed a fee by a State that is greater than that school's contribution to the fee the State is required to pay the Secretary. The State's school fee payment structure must also include a procedure by which a school with a high cohort default rate may be exempted from payment of the fee if the school can demonstrate to the satisfaction of the State that exceptional mitigating circumstances contributed to its cohort default rate. A State must provide a school a reasonable amount of time from the date it notifies the school that it is being assessed a fee under this provision to either pay the fee or submit an appeal, with appropriate documentation that demonstrates that exceptional mitigating circumstances contributed to its cohort default rate. The Secretary is particularly interested in knowing if the public believes it would be appropriate for the Secretary to provide regulatory guidance with respect to the exceptional mitigating circumstances a State may select. The Secretary also is interested in knowing if the public believes the following criteria would assist the States in developing their exceptional mitigating circumstances:

(1) The completion and job placement rates of Stafford and SLS loan borrowers at the school whose loans entered repayment during the fiscal year used for calculating the school's cohort default rate;

(2) The regional or State unemployment rates during the fiscal year used for calculating the school's cohort default rate and during the subsequent fiscal year;

(3) The income level of former Stafford and SLS loan borrowers at the school whose loans entered repayment during the fiscal year used for calculating the school's cohort default rate and during subsequent fiscal year;

(4) The exceptional mitigating circumstances criteria currently reflected in 34 CFR 668.17(d)(ii) under which a school may appeal its loss of eligibility to participate in the FFEL Program;

(5) The school's status as a Historically Black College and University, a Tribally Controlled Community College under section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, and a Navajo Community College under the Navajo Community College Act.

The Secretary is particularly interested in receiving public comment on these criteria as well as other criteria the public believes may assist a State in developing its exceptional mitigating circumstances.

A State may not attempt to collect a fee from a school under these regulations during the school's appeal of the fee to the State or if the school satisfactorily demonstrates to the State that exceptional mitigating circumstances contributed to its cohort default rate.

The Secretary is interested to know if the public believes that the State should be responsible in whole, or in part, for the portion of the State's fee that is attributed to: (1) the fees that are attributed to a school that has closed or no longer participates in the FFEL Program; (2) the fees attributed to schools that meet the exceptional mitigating circumstances standards established by the State; and, (3) the fees attributed to Historically Black Colleges and Universities, tribally controlled community colleges, and Navajo Community Colleges that are exempt from losing eligibility to participate in the FFEL Program under section 435(a)(2) of the HEA, if it is determined that such schools are not responsible for their contribution to the State's fee.

Executive Order 12866

1. *Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are explained elsewhere in this preamble under the heading of *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

2. *Clarity of the Regulations*

Executive order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their

clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 682.410 *Fiscal, administrative and enforcement requirements.*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in the understanding of the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW., (Room 5100 FB–10), Washington, D.C. 20202.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Certain reporting, recordkeeping, and compliance requirements are imposed on guaranty agencies, lenders, schools, and States by the regulations. These requirements, however, would not have a significant impact because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

There are no information collection requirements contained in these proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4310, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: September 30, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.202 is amended adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * * *

(a) * * *

(6) *Refund of excess interest paid on Stafford loans.*

(i) For a loan with an applicable interest rate of 10 percent made prior to July 23, 1992, and for a loan with an applicable interest rate of 10 percent made from July 23, 1992 through September 30, 1992, to a borrower with no outstanding FFEL Program loans—

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall calculate an adjustment and credit the adjustment as specified under paragraph (a)(6)(i)(B) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of the adjustment for a calendar quarter is equal to—

(*1*) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(*2*) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(*3*) Divided by 4;

(B) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall credit any amounts computed under paragraph (a)(6)(i)(A) of this section to—

(*1*) The Secretary, for amounts paid during any period in which the borrower is eligible for interest benefits;

(*2*) The borrower's account to reduce the outstanding principal balance as of the date the holder adjusts the borrower's account, provided that the borrower's account was not more than 30 days delinquent on that December 31; or

(*3*) The Secretary, for a borrower who on the last day of the calendar year is delinquent for more than 30 days.

(ii) For a fixed interest rate loan made on or after July 23, 1992 to a borrower with an outstanding FFEL Program loan—

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the lender shall calculate an adjustment and credit the adjustment to reduce the average daily principal balance of the loan as specified under paragraph (a)(6)(ii)(C) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of an adjustment for a calendar quarter is equal to—

(*1*) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(*2*) Multiplied by the outstanding principal balance of the loan (not including unearned interest added to principal); and

(*3*) Divided by 4;

(B) For any quarter or portion thereof that the Secretary was obligated to pay interest subsidy on behalf of the borrower, the holder of the loan shall refund to the Secretary, no later than the end of the following quarter, any excess interest calculated in accordance with paragraph (a)(6)(ii)(A) of this section;

(C) For any other quarter, the holder of the loan shall, within 30 days of the end of the calendar year, reduce the borrower's outstanding principal by the amount of excess interest calculated under paragraph (a)(6)(ii)(A) of this section, provided that the borrower's account was not more than 30 days delinquent as of December 31;

(D) For a borrower who on the last day of the calendar year is delinquent for more than 30 days, any excess interest calculated shall be refunded to the Secretary; and

(E) Notwithstanding paragraphs (a)(6)(ii) (B), (C), and (D) of this section, if the loan was disbursed during a quarter, the amount of any adjustment

refunded to the Secretary or credited to the borrower for that quarter shall be prorated accordingly.

(7) *Conversion to Variable Rate.* (i) A lender or holder shall convert the interest rate on a loan under paragraphs (a)(6) (i) or (ii) of this section to a variable rate.

(ii) The applicable interest rate for each 12-month period beginning on July 1 and ending on June 1 preceding each 12-month period is equal to the sum of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to June 1; and

(B) 3.25 percent in the case of a loan described in paragraph (a)(6)(i) of this section or 3.10 percent in the case of a loan described in paragraph (a)(6)(ii) of this section.

(iii) (A) In connection with the conversion specified in paragraph (a)(6)(ii) of this section for any period prior to the conversion for which a rebate has not been provided under paragraph (a)(6) of this section, a lender or holder shall convert the interest rate to a variable rate.

(B) The interest rate for each period shall be reset quarterly and the applicable interest rate for the quarter or portion shall equal the sum of—

(*1*) The average of the bond equivalent rates of 91-day Treasury bills auctioned for the preceding 3-month period; and

(*2*) 3.25 percent in the case of loans as specified under paragraph (a)(6)(i) of this section or 3.10 percent in the case of loans as specified under paragraph (a)(6)(ii) of this section.

(iv) (A) The holder of a loan being converted under paragraph (a)(7)(iii)(A) of this section shall complete such conversion on or before January 1, 1995.

(B) The holder shall, not later than 30 days prior to the conversion provide the borrower with—

(*1*) A notice informing the borrower that the loan is being converted to a variable interest rate;

(*2*) A description of the rate to the borrower;

(*3*) The current interest rate; and

(*4*) An explanation that the variable rate will provide a substantially equivalent benefit as the adjustment otherwise provided under paragraph (a)(6) of this section.

(iv) The notice may be provided as part of the disclosure requirement as specified under § 682.205.

(v) The interest rate as calculated under this paragraph may not exceed the maximum interest rate applicable to the loan prior to the conversion.

* * * * *

3. Section 682.207 is amended by removing the word "or" at the end of paragraph (b)(1)(ii)(A); removing the semicolon at the end of paragraph (b)(1)(ii)(B), and adding, in its place, a period and a new sentence; and by adding a new paragraph (b)(1)(ii)(C) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b)(1) * * *

(ii) * * *

(B) * * * A disbursement made by electronic funds transfer must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement; or

(C) A master check from the lender to the eligible institution to a separate account maintained by the school as trustee for the lender. A disbursement made by a master check must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement;

* * * * *

4. Section 682.305 is amended by revising paragraph (a)(4) to read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance.

(a) * * *

(4) If an originating lender sells or otherwise transfers a loan to a new holder, the originating lender remains liable to the Secretary for payment of the origination fees. The Secretary will not pay interest benefits or special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to the Secretary.

* * * * *

5. Section 682.401 is amended by adding new paragraphs (b)(10)(iii) and (b)(27); and by revising paragraph (b)(13) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(iii) The Secretary will pay a lender referral fee to each guaranty agency with whom the Secretary has a lender referral agreement, an amount equal to 0.5 percent of the principal amount of a loan made as a result of the agency's referral service.

* * * * *

(13) *Guaranty liability.* The guaranty agency shall guarantee—

(A) 100 percent of the unpaid principal balance of each loan guaranteed for loans disbursed before October 1, 1993; and

(B) Not more than 98 percent of the unpaid principal balance of each loan guaranteed for loans disbursed on or after October 1, 1993.

* * * * *

(27) *Collection Charges and Late Fees on Defaulted FFEL loans being Consolidated.* A guaranty agency may not guarantee collection charges or late fees that exceed 18.5 percent of the outstanding principal and interest on a defaulted FFEL Program loan that is included in a Federal Consolidation loan.

* * * * *

6. Section 682.404 is amended by revising paragraphs (a)(1), (b)(1), and (b)(2), by removing paragraph (b)(4), and by redesignating paragraph (b)(5) as paragraph (b)(4).

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1)(i) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement the Secretary reimburses the guaranty agency for 98 percent of its losses on default claim payments to lenders.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, the Secretary reimburses a guaranty agency for 100 percent of its losses on default claim payments—

(A) For loans made prior to October 1, 1993;

(B) For loans made under an approved lender-of-last-resort program;

(C) For loans transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(D) For a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976 for five consecutive fiscal years beginning with the first year of its operation.

* * * * *

(b) * * *

(1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 90 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by

the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program; or

(ii) 88 percent of its losses for loans made on or after October 1, 1993.

(2) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 80 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program; or

(ii) 78 percent of its losses for loans made on or after October 1, 1993.

* * * * *

7. Section 682.407 is removed and reserved.

8. A new § 682.418 is added to read as follows:

§ 682.418 State Share of Default Costs.

(a) *State Fee.* (1) In the case of any State in which there are located any institutions of higher education that have a cohort default rate that exceeds 20 percent, the State shall pay to the Secretary an amount equal to—

(i) The new loan volume attributable to all institutions in the State for the current fiscal year multiplied by the percentage specified in paragraph (b) of this section, multiplied by:

(ii) The quotient of the sum of the amounts calculated under paragraph (c) of this section for each institution in the State with a cohort default rate that exceeds 20 percent, divided by:

(iii) The total amount of loan volume attributable to current and former students of institutions located in that State entering repayment in the period used to calculate the cohort default rate.

(2) A State must pay the fee to the Secretary under paragraph (d)(1) of this section within 60 days after the State receives notification from the Secretary of the fee.

(b) *Percentage.* For purposes of paragraph (a)(1)(i) of this section, the percentage used shall be—

(1) 12.5 percent for fiscal year 1995;

(2) 20 percent for fiscal year 1996; and

(3) 50 percent for fiscal year 1997 and succeeding fiscal years.

(c) *Calculation.* (1) For purposes of paragraph (a)(1)(ii) of this section, the amount shall be determined by calculating for each applicable institution, the amount by which the loans received for attendance by each institution's current and former students who—

(i) Enter repayment during the fiscal year used for the calculation of the cohort default rate; and

(ii) Default before the end of the following fiscal year;

(2) Exceeds 20 percent of the loans received for attendance by all the current and former students who enter repayment during the fiscal year used for the calculation of the cohort default rate.

(d)(1) *School Fee.* A State may charge a fee to an institution of higher education that participates in the FFEL Program that is located in its State according to a fee structure, approved by the Secretary, that—

(i) Is based on the institution's cohort default rate and the State's risk of loss; and

(ii) Includes procedures under which a school that is subject to a fee under paragraph (d)(1) of this section may appeal the fee if the institution can demonstrate to the satisfaction of the State that—

(A) The fee it is assessed by the State is greater than the fee it is liable for under the fee structure established by the State and approved by the Secretary; or

(B) Exceptional mitigating circumstances contributed to its cohort default rate.

(2) For purposes of paragraph (d)(1)(i) of this section, the State may not assess a fee to a school that is greater than the amount that the school contributes to the State's fee.

(3) For purposes of paragraph (d)(1)(ii)(B) of this section, the State may select the exceptional mitigating circumstances which must be approved by the Secretary as part of the State's fee structure plan under section (d)(1) of this section.

(4) A State may not assess a fee to a school under paragraph (d)(1) of this section until it has received written approval from the Secretary of its fee structure and the exceptional mitigating circumstances.

(5) A State must provide a school a reasonable amount of time after the date the school receives notification from the State of the fee it is being assessed by the State to either pay the fee or—

(i) Demonstrate to the State that the fee it is assessed by the State is greater than the fee it is liable for under the fee structure established by the State and approved by the Secretary; or

(ii) Submit the documentation or other evidence required by the State to demonstrate that exceptional mitigating circumstances contributed to its cohort default rate.

(6) A State may not attempt to collect a fee from a school under paragraph (d)(1) of this section—

(i) During the timeframes established by the State under section (d)(5) of this section; and

(ii) If the school satisfactorily demonstrates to the State that exceptional mitigating circumstances contributed to its cohort default rate.

(7) A school is not exempt from a fee under this section if it withdraws its participation in the FFEL Program after receiving notification by a State that it is being assessed a fee under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1078)

[FR Doc. 94–25363 Filed 10–12–94; 8:45 am]
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federal register

Thursday
October 13, 1994

Part III

Department of Education

Early Education Programs for Children With Disabilities; Notices

DEPARTMENT OF EDUCATION

Early Education Program for Children With Disabilities; Technology, Educational Media, and Materials for Individuals With Disabilities Program; and Program for Children and Youth With Serious Emotional Disturbance

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces final priorities for three programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use these priorities in Fiscal Year 1995 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve outcomes for children with disabilities. The final priorities are intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific priority is listed under that priority.

SUPPLEMENTARY INFORMATION: This notice contains one final priority under the Early Education Program for Children with Disabilities, one final priority under the Technology, Educational Media, and Materials for Individuals with Disabilities Program, and one final priority under the Program for Children and Youth with Serious Emotional Disturbance. The purpose of each program is stated separately under the title of that program.

On August 1, 1994, the Secretary published a notice of proposed priorities for these programs in the **Federal Register** (59 FR 39234–39236).

These final priorities support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of these final priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in separate notices in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, one party submitted comments. The comments concerned the priority titled "Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities" proposed under the Technology, Educational Media, and Materials for Individuals with Disabilities Program. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes are not addressed.

Comment: The commenter expressed concern that only researchers and practitioners are described as actively involved in all phases of the research under the priority titled "Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities." The commenter suggested that the priority be revised to include family members and students with disabilities as active participants in the research.

Discussion: The Secretary agrees that collaborative research means partnerships between all stakeholders, including family members and students with disabilities, and that their inclusion is important to reducing the gap between research and practice.

Changes: A sentence has been added to the priority to emphasize the importance of including input from family members and students with disabilities in the research project. The new sentence states: "To further reduce the gap between research and practice, projects are encouraged to include input from family members and students with disabilities."

Comment: Under the priority titled "Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities", the same commenter expressed concern that the unique needs of students with cognitive disabilities are too frequently not considered. The commenter suggested that projects should indicate how such research will benefit this population of students.

Discussion: The priority as written does not preclude projects that focus on students with cognitive disabilities. However, it is the responsibility of the applicant to develop the project focus in terms of curriculum areas, grade/age levels, disabilities, types of services provided, and/or specific types of technology, media and materials. The Secretary does not believe it would be appropriate to limit projects to certain disability areas, but prefers to give potential applicants the latitude to include any disability.

Changes: None.

Early Education Program for Children With Disabilities

Purpose of Program: The purpose of this program is to support activities that are designed (a) to address the special needs of children with disabilities, birth through age eight, and their families; and, (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Proposed Absolute Priority—Early Childhood Research Institute: Follow Through

Background: This priority supports an Early Childhood Research Institute to develop, evaluate and disseminate strategies and procedures that will move the successful practices of early intervention and preschool programs into the early elementary school grades. These successful practices include, but are not limited to, (1) family-friendly and family-focused approaches to planning and providing special education and related services, (2) extensive parent involvement in service planning and delivery, (3) integrated and coordinated delivery of services when multiple services are necessary, (4) multi-disciplinary input into service planning and delivery, (5) developmentally appropriate services delivered in ungraded/mixed-age and mixed ability group settings, and (6) a pro-active approach to service planning and delivery in which services (e.g., team teaching, assistive technology applications, use of paraprofessionals) are integrated and concentrated to ensure that as many children with disabilities as possible successfully acquire critical skills taught in the primary grades (e.g., beginning literacy, social skills) that are crucial to

children's progress and adjustment in school.

The Institute's research, development and evaluation activities must (1) identify administrative, attitudinal, and programmatic barriers to establishing these successful practices in kindergarten through grade three (or equivalent) for children with disabilities and their families; (2) develop and evaluate strategies and procedures that are designed to overcome these barriers, such as strategies parents can use to maintain their involvement once their child reaches school age, and strategies school personnel can use to encourage and facilitate continued parent involvement; and (3) identify effective ways to disseminate the findings and products of the Institute so that successful practices, or combinations of practices, can be adopted easily by school systems.

The Secretary anticipates funding one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the Institute for the fourth and fifth years of the project period, the Secretary, in addition to applying the requirements of 34 CFR 75.253(a), considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the project, are to be performed during the last half of the Institute's second year and may be included in that year's evaluation required under 34 CFR 75.590.

Priority: The Early Childhood Research Institute considered for funding under this priority must—

(a) Conduct a program of research that addresses the issues identified above.

(b) Identify specific strategies and procedures that will be investigated.

(c) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies and procedures to be studied, the research methods and instrumentation that will be used, and the specific target populations and settings that will be studied.

(d) Collect, analyze, and report a variety of descriptive and outcome data, including (1) specific information on the settings, the service providers, the children and families targeted by the Institute (e.g., age, disability, level of functioning and membership in a special population, if appropriate); (2) multiple, functional outcome data for the children and families who are the focus of the strategies and procedures; and (3) multiple outcome data for the teachers, administrators, and other school staff involved in the research.

(e) Conduct the research in typical school settings, including settings that are, or will be, implementing different combinations of the successful practices.

(f) Conduct the research using methodological procedures that are designed to produce unambiguous findings regarding the effects of the strategies and procedures, as well as any findings on interaction effects between particular strategies or procedures and particular characteristics of participants or settings. These findings will be rendered through appropriate sample selection and adequate sample size to permit use of the findings in policy analyses.

(g) Design all activities in a manner that is likely to lead to improved services for children with disabilities and their families, including those who are members of cultural, linguistic, or racial minority groups.

(h) Develop, field test, and disseminate a variety of products that can be used for training and technical assistance activities with policy makers, administrators, school board members, parents, and service providers and that are likely to facilitate the implementation of the successful practices in early elementary school settings.

(i) Coordinate research and dissemination activities with other relevant efforts sponsored by the U.S. Department of Education, including other research institutes, technical assistance entities, and information clearinghouses.

(j) Provide research training and experience for at least 10 graduate students annually.

In determining whether to continue the Institute for the fourth and fifth years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute.

(b) The degree to which the Institute's research designs and methodological procedures demonstrate the potential for producing significant new knowledge and products.

In order to apply for funding for years four and five, the Institute must set aside in its budget for the second year, funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the second year. These funds are estimated to be approximately $4,000.

For Further Information Contact: Gail Houle, U.S. Department of Education, Room 4613, Switzer Building, 600 Independence Avenue, S.W., Washington, D.C., 20202–2644. Telephone (202) 205–9045. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1423.

Technology, Educational Media, and Materials for Individuals With Disabilities Program

Purpose of Program: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities. In creating Part G of the Individuals with Disabilities Education Act, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Proposed Absolute Priority—Collaborative Research on Technology, Media, and Materials for Children and Youth With Disabilities

Background: In 1993 an agenda was developed for the Technology, Educational Media, and Materials for Individuals with Disabilities Program which set forth four program commitments. These four commitments were derived from broad-based input from the field, and together they represent the means by which the Office of Special Education Programs intends to advance the use of technology, media, and materials with students with disabilities. They are:

(1) *Enable the Learner Across Environments.* This means fostering instructional environments, both in and out of school, that use technology, educational media, and materials to enable students with disabilities to

access knowledge, develop skills and problem-solving strategies, and engage in educational experiences necessary for their success as adults.

(2) *Promote Effective Policy.* This means policymaking at all levels in government, schools, and business to ensure accessibility, availability, effective application, and consistent use of appropriate technology, media, and materials.

(3) *Foster Use Through Professional Development.* This means training and supporting teachers, administrators, parents, and related service personnel on the benefits of instructional and assistive technologies so that they can increase productive use of instructional time, prepare students with disabilities for employment and citizenship, and promote their intellectual, ethical, cultural, emotional, and physical growth.

(4) *Create Innovative Tools.* This means encouraging development of varied and integrated technologies, media, and materials which open up and expand the lives of those with disabilities.

However, research is needed on how these interrelated commitments can be applied in the complex reality of educational practice. This priority addresses that need by supporting collaborative research, which means research based on a partnership between researchers and practitioners in which both are actively involved in all phases of the research—initial planning and design, collection of information or data, analysis of information or data, and reporting and dissemination. This research strategy is intended to produce methodologically sound research information that is relevant and applicable to practice and reduces the gap between research and practice. To further reduce the gap between research and practice, projects are encouraged to include input from family members and students with disabilities.

Priority: The Assistant Secretary establishes an absolute priority for collaborative research projects that—

(a) Formulate a research topic and design based on commitments (1), (2), and (3), as described above, as they relate to improving education and/or related services at the local level for students with disabilities. This priority is not intended to support projects that are primarily engaged in product development; thus, commitment (4) may be included only as a supporting activity. In formulating the research topic, projects must develop a focus in terms of curriculum areas, grade/age levels, disabilities, types of services provided, and/or specific types of technology, media and materials. In formulating the research design, projects must apply the standards for conducting rigorous social science research. The following research topics are offered as illustrative examples and do not represent the full range of possible topics. These examples are broad, and projects may opt for more narrow focuses. However, projects must address all three program commitments—either as background, contextual factors, or as components of interventions or manipulations.

Example 1: Research on how local policies in schools and other agencies restrict or facilitate the acquisition and use of assistive devices, and how professional development within the context of these policies can yield improved assistive technology services to better enable students to access school, home, and community environments.

Example 2: Research on how local policies regarding curriculum and accountability can be revised to promote interdisciplinary professional collaboration in the effective use of technology, media and materials to enable students with disabilities to acquire high-level problem-solving strategies.

Example 3: Research on how policies and professional practices may contribute to inequitable access and use of technology, media and materials for some students with disabilities, and how the inequities can be reduced by means of policy and/or professional interventions to better enable students with disabilities to engage in beneficial educational experiences.

(b) Conduct a program of collaborative research on the research topic.

(c) Measure the effects of the intervention and relationships within and across the program commitments (1, 2, and 3).

(d) Disseminate information on the findings of the collaborative research in a form conducive to use by other schools or service providers, as well as other researchers.

(e) Coordinate their activities, as appropriate, with recipients of grants under the Technology-Related Assistance for Individuals with Disabilities Act (Pub. L. 100–407 as amended by Pub. L. 103–218).

A project must budget for two trips annually to Washington, D.C., for (1) a two-day Research Project Directors' meeting; and (2) another meeting, to meet and collaborate with the project officer of the Office of Special Education Programs and the other projects funded under this priority, to share information and to discuss findings and joint methods of dissemination.

For Further Information Contact: Ellen Schiller, U.S. Department of Education, Room 3523, Switzer Building, 600 Independence Avenue, S.W., Washington, D.C. 20202–2641. Telephone: (202) 205–8123. 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.

Applicable Program Regulations: 34 CFR part 333.

Program Authority: 20 U.S.C. 1461.

Program for Children and Youth With Serious Emotional Disturbance

Purpose of Program: This program supports projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Proposed Absolute Priority—Nondiscriminatory, Culturally-Competent, Collaborative Demonstration Models To Improve Services for Students With Serious Emotional Disturbance and Prevention Services for Students With Emotional and Behavioral Problems

Background: The rates of identification, placement, and achievement of children and youth with emotional and behavioral problems vary across racial, cultural, gender, and socioeconomic dimensions. For example, African-American students are most likely to be identified as students with serious emotional disturbance (SED). African-Americans comprise 16 percent of public school enrollment, but represent 22 percent of all students identified with SED (based on data from the 1990 OCR survey of school districts), and 25 percent of secondary students with SED (based on data from OSEP National Longitudinal Transition Study). Rates of SED identification for

African-American students vary greatly across States but, on average, States with the lowest overall African-American enrollment have the highest SED incidence rates for those students and, conversely, States with the highest overall African-American enrollment have the lowest average rate of SED classification for these students (based on data from the 1990 OCR survey of school districts). These data suggest that African-American students may be over-represented in SED programs in some States, and underserved in others, and that some of these differences may be related to identification, evaluation, and placement methods that fail to recognize cultural differences.

Diversity must be acknowledged and valued, and both prevention and SED service delivery systems must be culturally-competent. Cultural competencies represent the interpersonal skills and attitudes that enable individuals to increase their understanding and appreciation of the rich and fluid nature of culture and of differences and similarities within, among, and between cultures and individuals.

Culturally-competent approaches recognize the cultural origins of teachers' and service providers' views, behaviors, and methods. These approaches also recognize that language and language use conventions are culturally based, and attend to the communicative styles of students and their families. Culturally-competent approaches address culturally-based definitions of family and networks. They view family and community as critical parts of a student's support system. Such approaches also demonstrate a willingness and ability to draw on community-based values, traditions, customs, and resources. Assessment, pre-referral, and preventive approaches that are culturally-competent and linguistically appropriate recognize and nurture the strengths—individual and cultural—that students bring to school.

There is a need to improve the capacity of individuals and systems to respond skillfully, respectfully, and effectively to students, families, teachers, and other providers in a manner that recognizes, affirms, and values their worth and dignity. To accomplish this, collaboration must be fostered—among families, professionals, students, and communities—to identify and provide culturally-competent services for students with SED and prevention services that address the needs of children and youth with emotional and behavioral problems.

Priority: The Assistant Secretary establishes an absolute priority for demonstration projects that develop, implement, evaluate, and disseminate nondiscriminatory, culturally-competent, collaborative practices to prevent children with emotional and behavioral problems from developing SED, and to improve special education and related services for ethnic and cultural minority students, in the least restrictive environment. The projects must establish local, community-based assessment, planning, prevention, and intervention teams that involve participation from education, mental health, juvenile justice agencies, other appropriate community service agencies, and organizations representing families. The first stage of each project must consist of the development and refinement of working agreements between the various community agencies and organizations, to identify approaches that improve the capacity of individuals and systems to respond skillfully, respectfully, and effectively to students, families, teachers, and other providers in a manner that recognizes, affirms, and values their worth and dignity.

The first stage planning must include the collaborative consideration and development, by all participating groups, of non-discriminatory, culturally-competent techniques that enhance the fairness and effectiveness of key service delivery elements, including but not necessarily limited to assessment, education, training, transition planning, and the provision of related services. The second stage of each project must consist of the implementation and evaluation of the services delivered, across service providers, followed by dissemination of the results.

A project must budget for two trips annually to Washington, D.C., for (1) a two-day Research Project Directors' meeting; and (2) another meeting, to meet and collaborate with the OSEP project officer and the other projects funded under this priority, to share information and to discuss findings and methods of dissemination.

For Further Information Contact: Tom V. Hanley, U.S. Department of Education, Switzer Building, Room 3526, 600 Independence Avenue, S.W., Washington, D.C. 20202–2641. Telephone: (202) 205–8110. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Intergovernmental Review

The Early Education Program for Children with Disabilities, the Technology, Educational Media, and Materials for Individuals with Disabilities Program and the Program for Children and Youth with Serious Emotional Disturbance are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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

Applicable Program Regulations: 34 CFR part 309, 328, and 333.

(Catalog of Federal Domestic Assistance Numbers: Early Education Program for Children with Disabilities, 84.024; Technology, Educational Media, and Materials for Individuals with Disabilities Program, 84.180; and Program for Children and Youth with Serious Emotional Disturbance, 84.237)

Dated: October 6, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–25258 Filed 10–12–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.024Q1]

Early Education Program for Children With Disabilities; Notice Inviting Applications for New Awards Under the Early Education Program for Children With Disabilities for Fiscal Year (FY) 1995

Purpose of Program: To support activities that are designed (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Public agencies and nonprofit private organizations.

Applications Available: November 14, 1994.

Deadline for Transmittal of Applications: January 13, 1995.

Deadline for Intergovernmental Review: March 13, 1995.

Available Funds: $750,000.

Estimated Average Size of Awards: $750,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 309.

Priority: The priority Early Childhood Research Institute: Follow Through in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

For Technical Information Contact: Gail Houle, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4613, Washington, D.C. 20202–2644. Telephone (202) 205–9045. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact: Sonya Jenkins, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4617, Washington, D.C. 20202–2644. Telephone (202) 205–9077. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m. Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED BOARD), telephone (202) 260–9950; on the Internet Gopher Server at GOPHRE.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice of a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1423.

Dated: October 6, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–25255 Filed 10–12–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.180U1]

Technology, Educational Media and Materials for Individuals With Disabilities Program; Notice Inviting Applications for New Awards Under the Technology, Educational Media, and Materials for Individuals With Disabilities Program for Fiscal Year (FY) 1995

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

Applications Available: November 21, 1994.

Deadline for Transmittal of Applications: January 27, 1995.

Deadline for Intergovernmental Review: March 28, 1995.

Available Funds: $1,500,000.

Estimated Average Size of Awards: $300,000 for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 333.

Priority: The priority Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

For Technical Information Contact: For technical information please contact Dr. Ellen Schiller, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3523, Washington, D.C. 20202–2641. Telephone: (202) 205–8123. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, Room 3525, Switzer Building, 600 Independence Avenue, S.W., Washington, D.C. 20202–2641. Telephone (202) 205–8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1461.

Dated: October 6, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–25256 Filed 10–12–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.237G1]

Program for Children and Youth With Serious Emotional Disturbance; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of program: To support projects, including research projects, for the purpose of improving special education and related services to children and youth with serious emotional disturbance, and demonstration projects to provide services for children and youth with serious emotional disturbance.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit

institutions or agencies are eligible for awards under this competition.

Applications Available: November 21, 1994.

Deadline for Transmittal of Applications: January 27, 1995.

Deadline for Intergovernmental Review: March 28, 1995.

Available Funds: $692,000.

Estimated Average Size of Awards: $173,000 for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 4

Note: The Department is not bound by any estimates in this notice.

Project Period: up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 328.

Priority: The priority Nondiscriminatory, Culturally-Competent, Collaborative Demonstration Models to Improve Services for Students with Serious Emotional Disturbance and Prevention Services for Students with Emotional and Behavioral Problems in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register** applies to this competition.

For Technical Information Contact: Dr. Tom V. Hanley, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3526, Washington, D.C. 20202–2641. Telephone: (202) 205–8110. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3525, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1426

Dated: October 6, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–25257 Filed 10–12–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
October 13, 1994

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 9:00 a.m. on Tuesday, October 25, 1994, and ending at noon on October 25, 1994. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention will meet at the Department of Health and Human Services conference room located at 200 Independence Avenue, S.W., District of Columbia. The Coordinating Council, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 94–25358 Filed 10–12–94; 8:45 am]

BILLING CODE 4410–18–P

Federal Register

Thursday
October 13, 1994

Part V

The President

Federal Register
Vol. 59, No. 197
Thursday, October 13, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 94–57 of September 30, 1994

Loan Guarantees to Israel Program

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 226(b) and section 614(a)(1) of the Foreign Assistance Act of 1961, as amended ("the Act"), 22 U.S.C. 2186(b) and 22 U.S.C. 2364(a)(1), respectively, I hereby determine that:

(1) $311.8 million of loan guarantee authority pursuant to section 226(a) and (b) of the Act for Fiscal Year 1995 is subject to the deduction requirements of section 226(d) of the Act; and
(2) it is important to the security interests of the United States that the aforementioned amount shall be reduced by $95 million without regard to the deduction requirement of section 226(d) of the Act or any other provision of law within the scope of section 614 of the Act;

Therefore, I hereby direct that such $95 million in loan guarantee authority shall remain available pursuant to section 226(a) and (b) of the Act and that $216.8 million in loan guarantee authority shall be deducted pursuant to section 226(d) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1994.

[FR Doc. 94–25537
Filed 10–11–94; 4:16 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 94–59 of September 30, 1994

Delegation of Authority Under Section 538 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 538(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306) (the "Act") and section 301 of title 3, United States Code, I hereby delegate the functions and authorities vested in me pursuant to section 538(a) of the Act to the Secretary of State, who is authorized to redelegate these functions and authorities consistent with applicable law.

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

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1994.

[FR Doc. 94–25538
Filed 10–11–94; 4:17 pm]
Billing code 4710–10–M

Presidential Documents

Proclamation 6734 of October 7, 1994

National Children's Day, 1994

By the President of the United States of America

A Proclamation

With every baby born in America, our Nation reaffirms its hope for the future. As parents and care givers, our responsibility is clear. Our most solemn obligation to our children cannot be merely that we hold a torch to guide their way around every dark and treacherous corner. Rather, we must strive to kindle a spark within each child—a spark that will become the flame of knowledge and imagination, the fire of justice and compassion. This is a task for which humanity has great experience and for which humans have little preparation. But in this task our Nation must succeed. So that when our children look to a future that seems, for many, clouded and uncertain, they have the power within themselves to light the way for all of us.

One of the most important steps in meeting that crucial challenge is providing for the health and safety of our children as they grow. That homicide and suicide are the leading causes of death among our youth is a national tragedy. We have enacted legislation that expands and improves the Head Start program, providing health, education, and social services for children of low-income families. America's new Childhood Immunization Initiative will help to vaccinate at least 90 percent of our Nation's infants—the most sweeping effort of its kind in American history. Our new crime bill supports programs that encourage youth to escape the destructive confines of gangs, and it goes a long way toward keeping guns out of the hands of juveniles.

But no government program will be truly effective without the caring involvement of every one of our citizens. Parents and siblings, teachers and neighbors—all of us must work to instill a sense of self and a sense of purpose in the lives of our youth. Children are our hope and our inspiration. For every finger painting that graces our kitchen walls, for every ball game that fills our streets and playgrounds with laughter, we join today in celebrating the many blessings our children bring.

The Congress, by House Joint Resolution 389, has designated the second Sunday in October as "National Children's Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 9, 1994, as National Children's Day. I call upon all Americans to express their appreciation and their love, on this day and every day, for all of our Nation's children. I invite Federal officials, local government, and families across the land to join together in observing this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, 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. 94–25547
Filed 10–11–94; 4:38 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6735 of October 7, 1994

Leif Erikson Day, 1994

By the President of the United States of America

A Proclamation

Nearly a millennium has passed since Leif Erikson set out on his voyage to explore North America, a land then thought to be no more than an uncharted wilderness across the waters. Filled with the same spirit of discovery that characterized the travels of his father, Eric the Red, who sailed from Norway to Iceland to Greenland, the journey of Leif Erikson remains one of history's greatest legends. To commemorate the life of this bold adventurer and to recognize the generations of Nordic Americans who have followed in his footsteps, we celebrate Leif Erikson Day, 1994.

Leaving behind the ice-covered mountains of Greenland, Erikson helped to set the stage for centuries of trans-Atlantic exchange between his father's native Norway and the people of the New World. Today, the United States and the Nordic countries of Denmark, Finland, Iceland, Sweden, and Norway, enjoy cordial friendships and are productive partners in fostering democracy and expanding trade. Carrying forward the ideals of their ancestors—ideals of liberty, human dignity, and self-determination—these nations stand with the United States in representing the freedom to which individuals around the world aspire.

The sons and daughters of Scandinavia who immigrated to this country in past centuries brought with them that abiding passion for justice and equality, and their determination to build a better life for themselves and their children has enriched our Nation immeasurably. For the tremendous contributions they have made to our society, and for the many wonderful traditions that their descendants continue to uphold, Americans across the country join in recognizing this special day every year.

In honor of Leif Erikson—son of Iceland, grandson of Norway—and of the vibrant Nordic American culture that continues to grace our Nation, the Congress, by joint resolution approved on September 2, 1964 (Public Law 88–566), has authorized and requested the President to designate October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 9, 1994, as Leif Erikson Day. I encourage all Americans to observe this occasion by learning more about our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, 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. 94–25548
Filed 10–11–94; 4:39 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6736 of October 7, 1994

Fire Prevention Week, 1994

By the President of the United States of America

A Proclamation

The United States has made tremendous advances through the years in reducing the terrible toll that fire takes on our citizens. In 1925, when President Calvin Coolidge proclaimed the first National Fire Prevention Week, he noted that nearly 15,000 lives were lost each year to fire in our country. Fortunately, the numbers we report today are considerably lower. Despite this important trend, the vast majority of fire fatalities—almost 80 percent—still occur in our homes. in the places where we should feel safest.

A key line of defense against home fires is the protection provided by smoke detectors. But smoke detectors must be operating properly to furnish the early warning necessary to allow safe escape from a fire. Even though 90 percent of our Nation's homes have at least one smoke detector installed, about one-third of all homes in which fires occurred had smoke detectors that were not functioning correctly, usually because of faulty or missing batteries. To emphasize the importance of keeping our smoke detectors in good working order, the United States Fire Administration and the National Fire Protection Association are working with our Nation's fire service and other emergency management professionals to communicate effectively this year's Fire Prevention Week theme, "Test Your Detector for Life."

Early warning of fire and smoke is critical because the majority of deaths as a result of home fires occur at night when people are most vulnerable. Smoke usually does not awaken us—instead it induces a deeper sleep. We need smoke detectors to alert us to the danger. During Fire Prevention Week, 1994, and throughout the entire year, it is important to remember four key points about home smoke detectors. First, make sure you have enough detectors. One detector should be installed outside each sleeping area and on every level of the home. As an added measure of protection, consider installing a smoke detector inside each bedroom. Second, test smoke detectors every month. Third, replace the batteries at least once a year. Fourth, replace your smoke detectors with new units if they are more than 10 years old. These four simple points could save lives and avoid serious injuries should a fire occur.

As we all think about the lifesaving message of Fire Prevention Week, let us also consider the dedication of the brave men and women of our Nation's fire service who risk their lives regularly to protect us. Last year, 78 firefighters died in the line of duty, with an estimated 101,500 injuries. These courageous individuals will be honored on Sunday, October 16, 1994, during the Thirteenth Annual National Fallen Firefighters Memorial Service at the National Fire Academy in Emmitsburg, Maryland.

Also deserving recognition are those who work within public and private organizations to reduce the toll exacted by fire. Further, we must recognize the efforts of public officials, educators, business leaders, and community and volunteer organizations that are working together to create a safer America.

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 the week beginning

October 9, 1994, as Fire Prevention Week. I call upon the people of the United States to plan and participate in fire prevention activities, both this week and throughout the year. I also ask all Americans to pay tribute to those firefighters who have lost their lives in the line of duty and to those men and women who continue in the noble tradition of service to their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, 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. 94–25549
Filed 10–11–94; 5:05 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6737 of October 7, 1994

Columbus Day, 1994

By the President of the United States of America

A Proclamation

At a time when experienced sailors navigated only within sight of shore whenever possible, Christopher Columbus conceived of a route no other had and sailed boldly into the open seas. Columbus' example reminds us that we must be willing, even eager, to leave the comfortable but often limiting shores of yesterday and journey toward the difficult and unmet challenges of tomorrow.

Exploring the frontiers of the new world, Columbus set the stage for the encounter between Europeans and Native Americans, an encounter whose impact continues to be felt today. It is particularly important to recognize anew the sacrifices and hardships suffered by both sides as a result of this meeting and to salute the rich cultural heritage each group has bestowed upon its descendants. Through time and tears, exchanges between these two cultures have led to greater understanding and rich opportunities for harmony and healing.

This year, as we celebrate the founding of a new world that is finally learning the infinite value of diversity, we continue to take an important lesson from Columbus' travels. In his great spirit of adventure and discovery, I encourage all Americans today to let the quartering winds of change propel us into the 21st century. Facing the future with courage and openness, as Columbus did in his day, we must strive to meet the challenges of the future with logic and foresight and with the certainty of moving ever forward.

In tribute to the many achievements of Christopher Columbus, the Congress of the United States, by joint resolution of April 30, 1934 (48 Stat. 657), and an Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 10, 1994, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, 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. 94-25550
Filed 10-11-94; 5:08 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6738 of October 8, 1994

National School Lunch Week, 1994

By the President of the United States of America

A Proclamation

Sound nutrition plays a vital role in ensuring that children reach their full potential physically, emotionally, and intellectually. Our commitment to the National School Lunch Program reflects the importance of nutrition in our daily lives.

As we celebrate National School Lunch Week this year, we reaffirm our concern for the health of our Nation by continuing to press forward in our comprehensive initiative requiring that school meals meet the Dietary Guidelines for Americans. Through this initiative, we will update the standards for school meals to reflect the most recent scientific consensus calling for low fat, high fiber foods to help reduce the likelihood of such life-threatening illnesses as cancer and heart disease. We also will help to instill eating habits that promote lifelong health and well-being, and we will rededicate ourselves to delivering school meals that meet the highest possible standards for nutritional quality and appeal.

The National School Lunch Program currently operates in more than 95 percent of the Nation's public schools and serves about 25 million lunches daily. Many children receive their only nutritious meal of the day at school. These school meals can increase a student's attention span and learning capability. They can improve overall health. And they can help to teach good dietary habits that will last a lifetime. These accomplishments are made possible by the joint efforts of principals, teachers, parents, Federal, State, and local officials, and especially the food service professionals working in more than 92,000 schools and residential child care institutions across the country. We commend all of these individuals for their concern and their dedication in making wholesome meals a reality for our Nation's children.

In recognition of the contributions of the National School Lunch Program to the nutritional well-being of children, the Congress, by joint resolution of October 9, 1962 (Public Law No. 87–780), has designated the week beginning the second Sunday in October of each year as "National School Lunch Week" and has requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning October 9, 1994, as National School Lunch Week. I call upon all Americans to recognize those individuals whose efforts contribute to the success of this valuable program.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, 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. 94-25667
Filed 10-12-94; 11:51 am]
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Vol. 59, No. 197

Thursday, October 13, 1994

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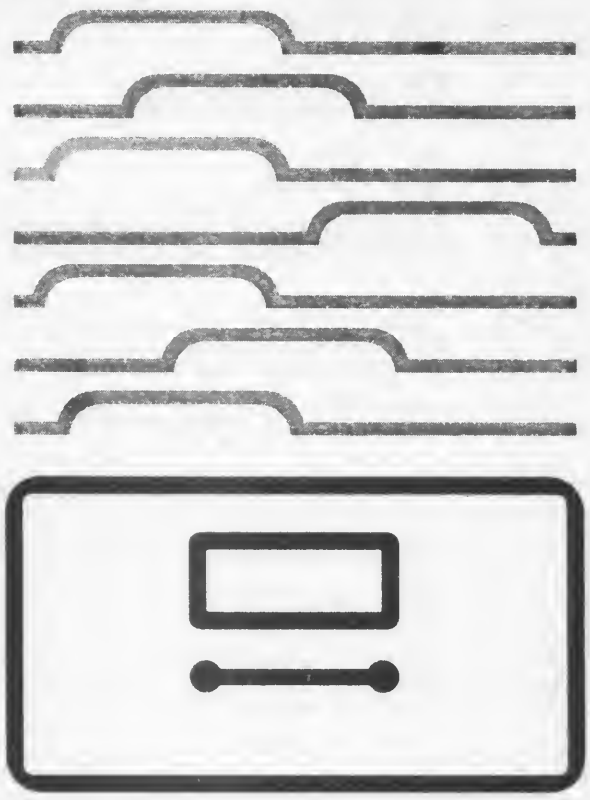

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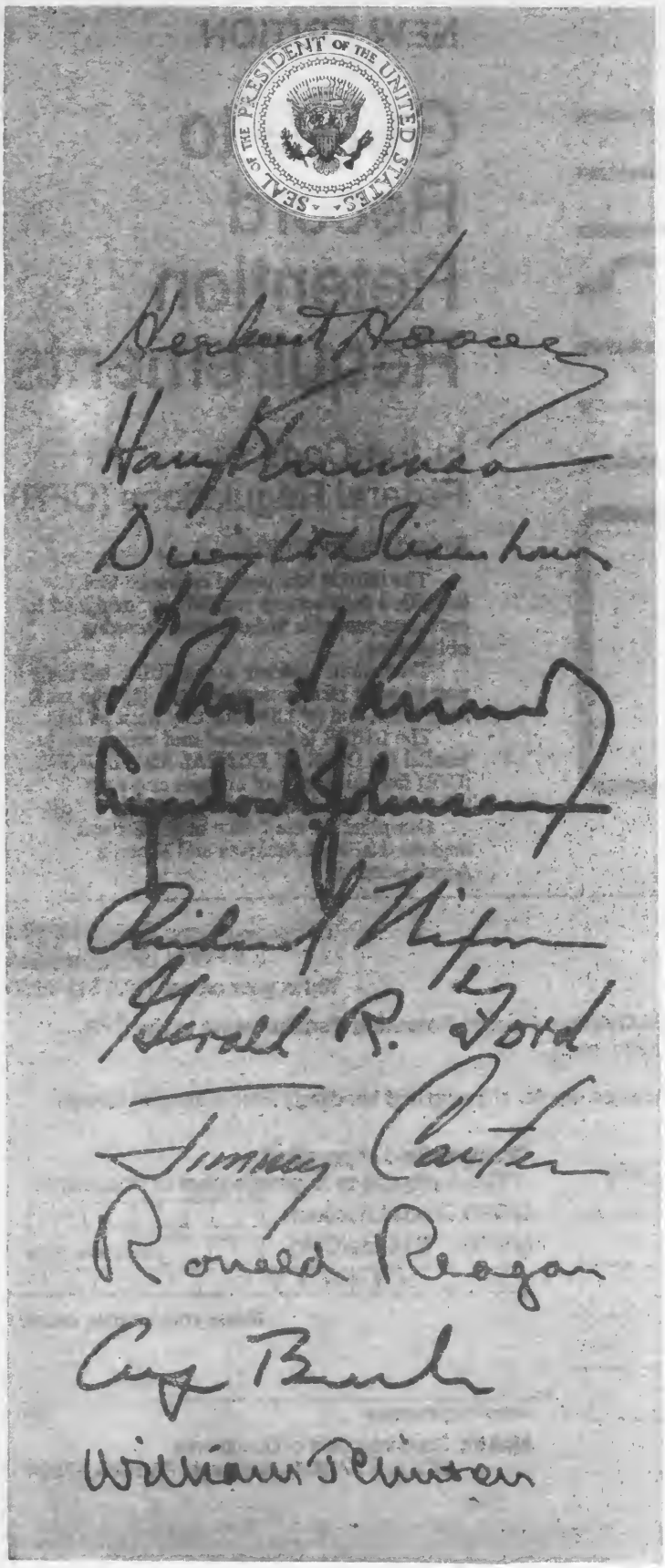

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